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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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Docket No. EP 711 (Sub-No. 2)

RECIPROCAL SWITCHING FOR INADEQUATE SERVICE

REPLY COMMENTS OF UNION PACIFIC RAILROAD COMPANY

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Union Pacific Railroad Company (“Union Pacific”) submits these reply comments on the Surface Transportation Board’s proposed rule providing for prescription of reciprocal switching to address “inadequate rail service.” *See Reciprocal Switching for Inadequate Service*, EP 711 (Sub-No. 2) (STB served Sept. 7, 2023) (“NPRM”).

Union Pacific is filing these reply comments to address the connection between our prior comments regarding the burdens of developing new data reporting technologies to implement the proposed rule and certain comments by other rail carriers regarding the legality of the proposed rule’s pre-complaint disclosure requirement.¹

Union Pacific’s opening comments described the burdens we would face to develop new systems and methods to implement the proposed rule, including the rule’s requirement that rail carriers provide shippers and receivers, upon request, “all relevant individualized performance records necessary to file a petition” under the rule. NPRM at 44 (proposed § 1145.8(a)). In specifically addressing the proposed regulation at § 1145.8(a), Canadian National Railway Company (“CN”) and CSX Transportation, Inc. (“CSXT”) both observed the Board lacks authority to require rail carriers to disclose such information to third parties prior to the

¹ Union Pacific also endorses and joins in the reply comments of the Association of American Railroads (“AAR”).

institution of a proceeding. *See* CN Comments at 33–34; CSXT Comments at 40. CN also highlighted the vague nature of proposed § 1145.8(a). For example, § 1145.8(a) does not say whether the shipper must identify specific lanes and 12-week periods in its request or whether the rail carrier is expected to scour its records to identify any 12-week period in which standards were not met in a given lane. Nor does § 1145.8(a) say whether, if the shipper makes a lane- and time-specific request and the rail carrier determines no standard was violated, the carrier satisfies the provision by producing nothing in response. *See also* CN Comments at 31–32. This lack of guidance will further complicate efforts to develop systems and methods for providing the information required to comply with § 1145.8(a), assuming the provision is even lawful.

The proposed rule’s provision for pre-petition disclosure of individualized performance data appears to reflect a presumption that shippers would not know whether they have a basis for filing a petition without such disclosure. Shippers should not need data from their rail carrier to decide whether the quality of the service they are receiving justifies petitioning for a regulatory remedy. Moreover, Union Pacific already provides customers with online access to a variety of data enabling them to track and quantify our performance. Union Pacific makes this information available to customers through its Shipment Management and Subscription Center. Union Pacific also has an external-facing customer service department called Customer Care & Support, as well as other personnel at our Harriman Dispatching Center and in our Network Planning and Operations and Field Operations departments, with responsibilities for supporting and improving the customer experience. Understanding and resolving service problems before they escalate is an essential task for Union Pacific. Informed customer communications throughout the process are critical. Candid and informed conversations help Union Pacific make operational improvements aimed directly at resolving customer service challenges and attracting

more business to Union Pacific. The Board's rules should encourage parties to engage in these less formal, cooperative communications, rather than funnel parties toward litigation.

Union Pacific urges the Board to address these issues by replacing § 1145.8(a) with an expedited discovery process. Even under the Board's original proposal, some discovery would inevitably be necessary, at least in some cases. *See* AAR Comments at 91. Under the discovery process, rather than relying on the carrier to decide which "performance records" are "necessary to file a petition," a petitioner could request specific performance records when it files a petition. The rail carrier would respond to the request as it would respond to any discovery request—that is, by producing the requested records or by objecting if it believed the request was inconsistent with the rule. The Board could quickly resolve any disputes.

Union Pacific also urges the Board to allow rail carriers 14 days, rather than seven days, to respond to shipper requests for individualized performance records, no matter what process is adopted for requesting such records. The proposed rule does not limit the number of record requests an individual shipper can make, and AAR's reply comments suggest the proposed transit time standard alone could sweep in a very large volume of movements. In addition, unless the Board adopts the proposal by Union Pacific and others to use quarterly performance data, rail carriers could be required to produce performance records involving different multi-week, year-over-year comparison periods for different shippers. In light of the uncertainties, the Board should establish a 14-day response period, at least initially. If, in practice, rail carriers experience only occasional requests for individualized service data, the Board could consider reducing the response time to seven days.

Respectfully submitted,

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