

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**URGENT ISSUES IN FREIGHT
RAIL SERVICE—RAILROAD
REPORTING**

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) **Ex Parte No. 770 (Sub-No. 1)**
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**PETITION FOR RECONSIDERATION OF FREIGHT RAIL CUSTOMER
ALLIANCE AND NATIONAL COAL TRANSPORTATION ASSOCIATION**

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Dated: February 20, 2024

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Pursuant to 49 C.F.R. § 1153.3(a), the Freight Rail Customer Alliance (“FRCA”) and National Coal Transportation Association (“NCTA”) jointly and respectfully seek reconsideration of the decision that the Surface Transportation Board (“Board” or “STB”) served in the above-captioned proceeding on January 31, 2024, with respect to the discontinuation of the service performance data previously required in the proceeding.¹

FRCA and NCTA first commend the Board for extending the obligation of Class I railroads to submit data and additional information regarding their level of employment. The railroads cannot provide adequate service without an adequate number of employees.

¹ Collectively, FRCA and NCTA represent a cross section of industries in the energy, including alternative fuels, manufacturing, chemical, and agriculture sectors. Members of FRCA and NCTA produce and deliver vital products, including light, power, heat, chemicals, and food consumed by the vast majority of Americans and export these vital commodities to our Nation’s numerous trading partners. Members also are responsible for millions of American jobs.

At that same time, FRCA and NCTA are very concerned by the Board's determination to terminate the service data reporting previously required in the proceeding. FRCA and NCTA respectfully submit that such reporting should not only be continued, but should also be made permanent. Moreover, the decision discontinues the service data reporting without any request for comment. In that regard, FRCA and NCTA urged the Board to make the service data reporting requirements permanent and expand those requirements as discussed in the letter they jointly submitted in EP 770 (Sub-No. 1) on November 17, 2022.²

The Decision appears to base the termination of the service data reporting in part on the improvement in service that the railroads have achieved. Decision at 2. That improvement is premised on the carriers' having met a majority of the one-year service targets. *Id.* at 1-2. The railroads – and not the Board or shippers – chose their own targets. The Decision itself “note[s] that these one-year service targets were not intended to reflect long-term service goals,” but rather what was “achievable within a one-year period” starting “from insufficient workforce levels.” *Id.* at 2. The Decision

² The Board noted the joint FRCA/NCTA letter in its decision extending the reporting requirements served May 2, 2023, at 7 n.16. The Board stated at the time that it “intend[ed] to consider, via a rulemaking proceeding, whether to require permanent data reporting requirements for service performance metrics.” *Id.* In contrast, the instant decision appears to limit consideration of future permanent reporting to employment data. Decision served Jan. 31, 2024, at 8 n.26. The Board's apparent backtracking from its earlier statement, with little explanation, and with no acknowledgment of the Board's prior statement or consideration of FRCA/NCTA's prior submission, constitutes material error, beyond the agency's failure to consider the substantive need for the data as explained in the body of this submission.

does not indicate that service is now adequate. Adequacy of service is thus not a basis for discontinuing the service data reporting.

The Board also credits statements from the Four Carriers (BNSF, CSX, NS, and UP) that “they are committed” to growing their traffic and converting “substantial amounts of freight from trucks to rail.” *Id.* at 5-6. The experience of FRCA and NCTA is that such statements cannot be taken at value. In particular, the railroads presented Precision Scheduled Railroading (“PSR”) as “doing more with less,” when their actions amounted to “doing less with less,” as noted by former Chairman Begeman and others. Shippers and the public are still paying the price for the resulting service deficiencies.

Furthermore, the improvement that the Board perceives in the operating metrics for 2023 was achieved with total volumes, particularly intermodal, that were below the level achieved in 2022, and the 2022 volumes were below the level achieved in 2021. The railroads’ ability to achieve some improved operating metrics in 2023 provides little assurance that they will be able to manage volume growth that may occur in 2024 and beyond. Moreover, the railroads are often quick to control volume not by improving service, but by suppressing demand through adverse pricing and curtailing service by parking trainsets, imposing embargoes, delaying trains, etc. The Board should thus continue to have in place the means to monitor and verify service improvement before placing trust in the railroads’ self-serving pronouncements. There is also some conceptual incongruity in the Board’s continuing to require reporting on employment because it is so essential to service, without also requiring reporting of the actual service metrics.

Beyond that, even if the railroads are able to grow their volumes in 2024 and beyond, and handle that increased growth without stress, accumulating a full time series of data, spanning both favorable and unfavorable periods, will be of immense value when difficulties do arise. Earlier detection of service deterioration will be possible, so that the Board will not be having to request information only after problems have taken root. The Board, shippers, and the public will have more rapid insight into whether problems are localized or more systematic, confined to one carrier, affect multiple commodities, extend beyond headcounts, relate to changes in operational practices or capital expenditure trends, etc. The Board will also have an opportunity to intervene before things get out of line, and shippers will also have some ability to determine if their problems are isolated or part of a larger trend. Without the data, any Board intervention will be necessarily reactive, and the ability of shippers to prepare for adversity and develop alternatives, where feasible, will be impaired. To that end, FRCA and NCTA, together with other shipper associations, explained the need for systematic collection of data in good times as well as bad to provide and maintain a suitable baseline, particularly for purposes of monitoring compliance with the common carrier obligation and to facilitate earlier detection in event of deterioration, in comments filed two years ago in EP 767, *First-Mile/Last-Mile Service* (Feb. 17, 2022), at 3.

Finally, the railroads have not shown that providing the data imposes an unreasonable burden or that they do not compile the data for their own internal purposes. For example, some of the railroads very publicly present their on-time performance data on their website and/or in weekly communications to their shippers. Even if some of the

data does pose burdens, the first step should not be to throw out the data reporting altogether, but instead to see if the burdens can be adjusted by utilizing similar or substitute data that the railroads regularly compile and utilize in the regular conduct of their operations.

For these reasons, FRCA and NCTA urge the Board to reconsider its determination to terminate the service data reporting in its recent decision.

Respectfully submitted,

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