

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 770

URGENT ISSUES IN FREIGHT RAIL SERVICE

Docket No. EP 770 (Sub-No. 1)

URGENT ISSUES IN FREIGHT RAIL SERVICE—RAILROAD REPORTING

Digest:¹ The Board declines to reconsider its decision not to extend required reporting of certain railroad service performance data and closes the dockets in which the decision is being issued.

Decided: May 7, 2026

In a decision issued on January 31, 2024, in Docket No. EP 770 (Sub-No. 1) (January 2024 Decision), the Board declined to extend the mandatory reporting of rail service performance data that the Board had imposed pursuant to prior decisions in that docket. In support of its decision, the Board cited improved railroad service, as reflected by performance data submissions, and its continued ability to monitor service through ongoing required reporting. The Freight Rail Customer Alliance (FRCA) and National Coal Transportation Association (NCTA) (collectively, Petitioners) jointly filed a petition for reconsideration, asking the Board to reinstate the rail service performance data reporting requirements. Other parties filed comments. As discussed below, the Board will deny the petition.

BACKGROUND

Since 2016, the Board has collected a variety of railroad performance data from Class I railroads pursuant to rules adopted in United States Rail Service Issues—Performance Data Reporting (U.S. Rail Service Issues), Docket No. EP 724 (Sub-No. 4). See 49 C.F.R. part 1250. In April 2022, the Board held a two-day public hearing in Docket No. EP 770 to address serious rail service problems and associated recovery efforts. The Board subsequently issued a decision in Docket No. EP 770 (Sub-No. 1) on May 6, 2022, directing four Class I carriers, BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company, and Union Pacific Railroad Company (collectively, the Four Carriers), to submit service recovery plans, followed by biweekly service progress reports for a three-month period. Additionally, in that

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

same decision, the Board directed all Class I carriers (the Four Carriers, plus Canadian National Railway Company, Canadian Pacific Railway Limited, and Kansas City Southern Railway Company)² to submit certain weekly performance data (in addition to the existing railroad performance data reporting required by 49 C.F.R. part 1250) and to collect and report additional monthly employment-related data. Following two decisions in Docket No. EP 770 (Sub-No. 1) extending the data collection period through the end of 2023, in its January 2024 Decision, the Board ordered all the Class I carriers to continue submitting the additional employment data through December 2024.³ However, the Board found that in light of recent service improvements reflected in the data and its continued ability to monitor the durability of service improvements through ongoing employment data reporting, it was not necessary to extend the reporting period for the additional railroad service performance data in Docket No. EP 770 (Sub-No. 1). A comprehensive overview of those data reporting requirements can be found in the Board's January 2024 Decision.

On February 20, 2024, Petitioners jointly filed a petition for reconsideration of the January 2024 Decision in Docket No. EP 770 (Sub-No. 1). Reply comments in support of the petition were filed by: the American Chemistry Council (ACC); the National Industrial Transportation League (NITL); the American Fuel & Petrochemical Manufacturers Association (AFPM);⁴ the Brotherhood of Locomotive Engineers and Trainmen, the Brotherhood of Maintenance of Way Employees Division/IBT, the Brotherhood of Railroad Signalmen, the International Association of Boilermakers, the International Association Of Machinists and Aerospace Workers District #19, the International Association of Sheet Metal, Air, Rail and Transportation Workers Mechanical Division, and the National Conference of Firemen and Oilers, 32BJ/SEIU (collectively, Unions); and the Private Railcar Food & Beverage Association (PRFBA). The Association of American Railroads (AAR) replied in opposition to the petition.

Petitioners argue that the Board should have continued to require reporting of the additional rail service performance data established in this docket, as shippers remain concerned about the adequacy of railroad service. (Pet. 2-3, Urgent Issues in Freight Rail Serv.—R.R. Reporting, EP 770 (Sub-No. 1).) They note that while data submitted during 2023 showed some improvement over the prior year, the improvement occurred in an environment of declining rail traffic volumes. This, Petitioners argue, suggests that if rail volumes increase going forward, rail

² Canadian Pacific Railway Limited and Kansas City Southern Railway Company subsequently merged to form Canadian Pacific Kansas City Limited. See Canadian Pac. Ry.—Control—Kan. City S., FD 36500 et al. (STB served Mar. 15, 2023).

³ The Board later simplified and further extended the employment data reporting requirements through December 31, 2025, in a decision served in Docket No. EP 770 (Sub-No. 1) on December 20, 2024 (December 2024 Decision). Reporting was not further extended after the December 2024 Decision.

⁴ Comments on the petition were due by March 11, 2024. See 49 C.F.R. § 1104.13. AFPM filed its comments on March 14, 2024. However, it is within the Board's discretion to permit late filings, and it is appropriate to do so here. Accepting AFPM's comments into the record will not prejudice any party or unduly prolong the proceeding. See Tenth Ave. Neighbors—Pet. for Declaratory Ord., FD 36654, slip op. at 2 n.2 (STB served May 9, 2024).

service could again deteriorate. (*Id.* at 3.) Petitioners therefore argue that the Board should require carriers to continue submitting service data to allow the Board and shippers to more easily detect possible future deteriorations in rail service and permit the Board to “have an opportunity to intervene before things get out of line.” (*Id.* at 4.) They also note that the Board, in its January 2024 Decision, did not conclude that rail service levels were adequate. (*Id.* at 2-3.)

ACC argues that the additional service data reporting requirements have “proven valuable to the Board and rail customers,” and have allowed the Board “to address the recent service crisis and avert future crises.” (ACC Comments 1, Urgent Issues in Freight Rail Serv.—R.R. Reporting, EP 770 (Sub-No. 1).) ACC further argues “that rail service has improved because traffic volumes have dropped, not because carriers have adequately addressed the root causes of the recent service crisis.” (*Id.* at 3.)

NITL acknowledges “that the rail industry has improved its service generally since the severe disruptions that occurred in 2022 and early 2023.” (NITL Comments 2, Urgent Issues in Freight Rail Serv.—R.R. Reporting, EP 770 (Sub-No. 1).) But NITL argues that “[c]ontinuing [service data] reporting is prudent while the industry adjusts to increasing traffic volumes and until rail industry employee shortages are more fully addressed.” (*Id.*) Likewise, AFPM states that “it is concerning” that the Board discontinued the rail service data reporting requirement in light of expected rail traffic increases. (AFPM Comments 1-2, Urgent Issues in Freight Rail Serv.—R.R. Reporting, EP 770 (Sub-No. 1).)

The Unions note that while the Class I carriers met the one-year service targets they set for themselves, meeting these targets is not indicative of strong performance. (Union Comments 1-2, Urgent Issues in Freight Rail Serv.—R.R. Reporting, EP 770 (Sub-No. 1).) And PRFBA states that its “members have continued to be adversely impacted by poor rail service.” (PRFBA Comments 2, Urgent Issues in Freight Rail Serv.—R.R. Reporting, EP 770 (Sub-No. 1).)

On March 11, 2024, AAR replied in opposition to the petition for reconsideration. It argues that there is no need for continued service data collection (set forth in Docket No. EP 770 (Sub-No. 1)) and that Petitioners have not addressed or shown any possible grounds for reconsideration, including material error, or new evidence or changed circumstances that could have materially affected the case. (AAR Reply 3, Urgent Issues in Freight Rail Serv.—R.R. Reporting, EP 770 (Sub-No. 1).)

DISCUSSION AND CONCLUSIONS

A party may seek Board reconsideration of a decision by submitting a timely petition demonstrating material error in the prior decision or identifying new evidence or substantially changed circumstances that would materially affect the prior decision. 49 U.S.C. § 1322(c); 49 C.F.R. § 1115.3. In a petition asserting material error, a party must do more than simply make a general argument; it must substantiate its claim of material error. See Canadian Pac. Ry.—Control—Dakota, Minn. & E. R.R., FD 35081, slip op. at 4 (STB served May 7, 2009). Moreover, no matter the claimed basis for reconsideration (new evidence, changed circumstances, or material error), the grounds must be sufficient to convince the Board that its

prior decision in the case would be materially affected in order for reconsideration to be granted. See Montezuma Grain Co. v. STB, 339 F.3d 535, 541-42 (7th Cir. 2003); Canadian Nat’l Ry.—Control—EJ&E W. Co., FD 35087 (Sub-No. 8), slip op. at 4 (STB served Dec. 21, 2018).

Petitioners have neither demonstrated material error nor presented new evidence or substantially changed circumstances that would materially affect the decision. The Board therefore will deny their petition.

Petitioners argue that the Board materially erred in deciding to “terminate” the service performance data reporting requirements and question the importance the Board ascribed to improvements in railroad-selected service targets.⁵ (See Pet. 2-5, Urgent Issues in Freight Rail Serv.—R.R. Reporting, EP 770 (Sub-No. 1).) However, the Board observed that between May 13, 2022, and December 22, 2023, each of the Four Carriers improved the timeliness of their manifest carload service, which the Board described as a “key performance indicator.” Jan. 2024 Decision, EP 770 (Sub-No. 1), slip op. at 4. In addition, for the period from November 25, 2023, to December 22, 2023, the Board examined each of the Four Carriers’ individual service and employment targets and whether they had met those targets. Id. at 4-7. Based on this examination, the Board found that the data showed “improvement reflected in several key performance indicators, especially with regard to service.” Id. at 7. Given that the predicate for the collection of the service data in Docket No. EP 770 (Sub-No. 1) was a particular period with significant and widespread service problems, this focus on service improvement was consistent with the Board’s overall approach to the temporary collection, which was in addition to the permanent rail performance data reporting required by 49 C.F.R. part 1250.

Petitioners have not identified any errors in the Board’s consideration of the data or the conclusion that the service data showed improvement. Rather, Petitioners argue that the improvements do not support the Board’s decision because the service targets were set by the railroads themselves and were not long-term service goals. But the Board asked the railroads to set the targets and never intended the data reporting to assess progress toward long-term service goals. See Jan. 2024 Decision, EP 770 (Sub-No. 1), slip op. at 2 (observing that “these one-year service targets were not intended to reflect long-term service goals but rather to reflect realistic service improvements achievable within a one-year period,” and describing the Board’s initiating data collection as “an immediate step toward addressing the significant service problems”).

Petitioners’ arguments that low traffic volumes facilitated the improvements, and that service data reporting should therefore continue in light of expected increases in traffic volume, also do not warrant reconsideration of the January 2024 Decision. Petitioners question the railroads’ ability to respond to increased volumes without compromising service and claim a “conceptual incongruity” in the Board’s decision “to require reporting on employment because it

⁵ Petitioners do not cite the reconsideration standard or expressly refer to any of the bases for reconsideration under that standard, apart from a single reference to “material error” in one footnote of their petition. Petitioners’ central argument appears to be that reconsideration should be granted because the Board committed material error in “fail[ing] to consider the substantive need” for continued service performance data reporting. (Pet. 2 n.2, Urgent Issues in Freight Rail Serv.—R.R. Reporting, EP 770 (Sub-No. 1).)

is so essential to service, without also requiring reporting of the actual service metrics.” (Pet. 3, Urgent Issues in Freight Rail Serv.—R.R. Reporting, EP 770 (Sub-No. 1).) But the Board explained that “the service crisis that necessitated this proceeding was due in large part to a significant reduction in workforce levels by the Four Carriers, which left them unable to handle the last significant increase in traffic that came when the economy began to recover in late 2020.” Jan. 2024 Decision, EP 770 (Sub-No. 1), slip op. at 8. It noted that the railroads expected increased traffic due to forecasted improvements in economic conditions. Id. at 7. The Board also observed that employment levels at the Four Carriers were still below pre-pandemic levels. Id. at 8. Accordingly, the Board explained that it would continue monitoring whether railroads will have a sufficient workforce to handle the potential increased traffic in a satisfactory manner by continuing to collect employment data. Id. In sum, the Board provided a reasoned explanation for narrowing its data reporting: it discontinued its temporary collection of the service data required in this proceeding (which was being filed in addition to the existing performance data reporting required by 49 C.F.R. part 1250) because rail performance had recovered, while continuing to collect employment data to “assess the durability of the . . . service recovery efforts and the ability of the Four Carriers to meet an increase in service demand.” Id. Notwithstanding the discontinuation of the service data reporting required in this proceeding, the Board continues to collect railroad performance data from Class I carriers under 49 C.F.R. part 1250, and that data will shed light on railroad performance in managing changes in traffic. While shippers understandably value additional service data, Petitioners’ preference for a different decision does not mean that the Board materially erred. However, recognizing that the agency’s permanent collection can be improved, especially as it pertains to more customer-centric metrics, the Board recently issued a decision requiring Class I carriers to report, on a weekly basis, two additional service-related performance data metrics involving original estimated time of arrival and industry spot and pull. See Updating Class I Rail Carrier Reporting Requirements, EP 787, slip op. at 1 (STB served May 8, 2026).

Petitioners also argue that the “Board’s apparent backtracking” from a statement in the May 2, 2023 decision in Docket No. EP 770 (Sub-No. 1) (May 2023 Decision) constitutes material error. (Pet. 2 n.2, Urgent Issues in Freight Rail Serv.—R.R. Reporting, EP 770 (Sub-No. 1).) Petitioners note that in that decision, the Board stated it “intend[ed] to consider, via a rulemaking proceeding, whether to require permanent data reporting requirements for service performance metrics.” (Id. (citing May 2023 Decision, slip op. at 7 n.16).) But Petitioners argue that in its January 2024 Decision, the Board limited its consideration of future permanent reporting to employment data without proper explanation.⁶ (Id.)

This was not material error. The Board’s statement in the May 2023 Decision did not require the Board to propose or adopt permanent service reporting requirements, much less to extend the temporary requirements until it adopted permanent reporting. Further, while the Board did not discuss permanent service reporting in the January 2024 Decision, its statement about a possible employment data rulemaking neither precludes nor limits the possibility of other service data rulemakings. See Jan. 2024 Decision, EP 770 (Sub-No. 1), slip op. at 8 n.26; see

⁶ Petitioners also note that the Board did not request comments before discontinuing service data reporting. (Id. at 2.) But they point to no authority that would have required the Board to first seek public comment.

also, e.g., Updating Class I Rail Carrier Reporting Requirements, EP 787, slip op. at 1, 5-26 (adopting a rule that requires Class I weekly reporting of two additional service metrics, original estimated time of arrival and industry spot and pull). Although the Board’s collection of certain service data in Docket No. EP 770 (Sub-No. 1) was predicated on the service issues impacting the rail industry at that time, the Board has broad authority to collect service data on a permanent basis to support its oversight and regulation of rail carriers. See U.S. Rail Serv. Issues, EP 724 (Sub-No. 4), slip op. at 5 (STB served Nov. 30, 2016).

Next, Petitioners emphasize the value of continuous reporting: “[A]ccumulating 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.” (Pet. 4, Urgent Issues in Freight Rail Serv.—R.R. Reporting, EP 770 (Sub-No. 1).) But, while a continuous series of data can provide valuable information, that does not mean that the Board erred in the January 2024 Decision. As discussed above, the Board fully explained its decision not to extend its temporary service data reporting in light of improved service data and its conclusion that continued reporting of employment data would allow it to monitor the durability of the service recovery related to the particular crisis at issue in Docket Nos. EP 770 and EP 770 (Sub-No. 1).

Petitioners also argue that the railroads have not shown that service data reporting is burdensome, and that the Board did not consider ways to reduce the burden of reporting service data. (Pet. 4-5, Urgent Issues in Freight Rail Serv.—R.R. Reporting, EP 770 (Sub-No. 1).) But given the Board’s conclusion that it did not need to order continued reporting of service data to address the issues in Docket Nos. EP 770 and EP 770 (Sub-No. 1), the Board did not need to consider the extent of any burden. Should the Board propose service data reporting in a rulemaking, it could consider arguments raised regarding the burden (or lack thereof) for any permanent data collection. See, e.g., Updating Class I Rail Carrier Reporting Requirements, EP 787, slip op. at 6-8 (discussing burden of service reporting rule being adopted).

Finally, Petitioners do not identify, or suggest the existence of, any new evidence or changed circumstances warranting reconsideration.

Like the Petitioners, ACC, NITL, AFPM, the Unions, and PRFBA make only generalized arguments in favor of continued reporting and provide no grounds for reconsideration. They too fail to demonstrate material error, new evidence, or changed circumstances, as they do not address any of these criteria.

In sum, neither the Petitioners, nor any other parties, have met the standard for demonstrating that reconsideration of the Board’s January 2024 Decision is warranted. As a result, the petition for reconsideration will be denied.

As reporting in Docket No. EP 770 (Sub-No. 1) has ended, see Dec. 2024 Decision, EP 770 (Sub-No. 1), slip op. at 3, that docket will be closed. Docket No. EP 770 will also be closed as the Board will not take further action in that docket.

It is ordered:

1. The petition for reconsideration is denied.
2. Docket Nos. EP 770 and EP 770 (Sub-No. 1) are closed.
3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, and Schultz.