

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 724 (Sub-No. 5)

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PETITION FOR RULEMAKING TO AMEND 49 C.F.R. PART 1250

REPLY COMMENTS OF
THE ASSOCIATION OF AMERICAN RAILROADS

Pursuant to a decision served on April 5, 2019 by the Surface Transportation Board (“STB” or “Board”) in this proceeding, the Association of American Railroads (“AAR”) respectfully submits these reply comments in response to the comments filed by the American Chemistry Council (“ACC”) on May 6, 2019.

ACC’s petition for rulemaking that began this proceeding asked the Board to impose further performance reporting requirements on top of those established by rulemaking in 2016, including a requirement that all railroads operating in New Orleans, East St. Louis, and Memphis (collectively, “Mississippi Gateways”) jointly report certain performance metrics.¹ AAR opposed the petition in comments filed on January 28, 2019, because ACC did not demonstrate that their requested custom reporting would provide any public benefits that would justify the additional costs it would impose on railroads. The AAR reply also argued that ACC had not

¹ In its most recent pleading, ACC has withdrawn its request for a rule that would require all Class I, terminal and switching railroads operating in Chicago to report weekly average terminal dwell time, measured in hours.

explained why the data that railroads make available to their customers and existing STB reporting was insufficient for chemical shippers.²

The Board's April 5 decision directed ACC to provide "specific examples of shippers' experiences using performance data" already reported and "to explain how the additional data that it proposes to be reported would materially enhance shippers' business and supply chain decision-making with reference to specific scenarios or real-world circumstances." ACC was also asked to quantify the value of the reporting. Further, ACC was directed to explain "why the existing performance data reported pursuant to § 1250.2(a)(2) are insufficient indicators as to rail performance across the network, including at the Mississippi Gateways."³

Despite a second bite at the apple, ACC has failed to demonstrate that its requested reporting will have public benefits tied to the Board's regulatory authority that would justify the expense and burden that reporting would place on carriers. In its filing, ACC relates a few anecdotes that anonymous ACC members used data reported to the Board to escalate service conversations with rail carriers beyond the carriers' first level of customer service personnel or to make internal car fleet decisions.⁴ But ACC fails to detail these examples with any specificity or to explain how these experiences differ from shippers' ability to achieve similar results through use performance reports that were publicly available through the rail performance measures website or on individual carrier websites.⁵ For many years prior to the Board's rulemaking,

² See AAR Reply at 5.

³ April 5 decision at 2.

⁴ Because ACC's pleading cites anonymous members, it is impossible for AAR or the Board to know whether a single member represents multiple examples given in the pleading.

⁵ Railroads make public large amounts of information regarding their overall operations and specific local issues on their websites, in addition to the information they share with customers about their own shipments. See, e.g., <http://www.bnsf.com/news-media/customer-notifications.html>.

railroads made available network level performance metrics, including the terminal dwell metric from the carriers' most significant yards.

Most significantly, ACC has not justified its request for joint reporting of metrics from the Mississippi Gateways. AAR detailed in our May 6 filing the unique circumstances that caused the railroads that operate in Chicago to undertake significant coordination efforts at great time and expense. It was this effort, driven by business needs stemming from the complexity of Chicago operations, that allowed joint reporting. In contrast, operations in the Mississippi Gateways do not come close to the complexity associated with Chicago, nor are any of those Gateways as central to the national rail network. Moreover, Memphis, East St. Louis, and New Orleans do not have comparable commuter rail service to Chicago. Moreover, no other stakeholder group has come forward seeking joint reports from these specific gateways.

ACC states that it based its request for joint reporting at the Mississippi Gateways on representations of some number of its members ("multiple members") that those members move approximately 25% of their individual traffic through the three gateways, but ACC does not attempt to prove that this sampling is representative of chemical traffic generally. ACC merely suggests that the Board could look to the confidential carload waybill sample ("CWS") to determine the volume of STCC 28 traffic that moves through the Mississippi Gateways. Though ACC should bear some burden of persuasion that a rulemaking is necessary here, the CWS can give the Board a rough estimate of interchange traffic that flows through these gateways. AAR cautions, however, that the waybill sample contains information on commercial interchanges, i.e. the location designated by carriers as interchanges for commercial purposes on a waybill, not necessarily the operational interchanges reflecting where traffic actually moved. Review of the

CWS can, however, give the Board a rough, order-of-magnitude understanding of the volume of interchange traffic at each Mississippi Gateway.

Even after two pleadings, it remains unclear exactly what the ACC is asking to be reported for the Mississippi Gateways. Based on its petition, it appears that ACC is seeking three joint reports – average daily car count, average number of trains held for delivery (sorted by carrier), and terminal dwell time – for each of the Mississippi Gateways.⁶ AAR reaches this conclusion based on ACC’s focus on terminal dwell in these gateways and in seeking to require Chicago terminal dwell reporting by rule. But ACC also states that its intent “was to extend the existing Chicago terminal reporting to the Mississippi Gateways.”⁷ ACC does not explicitly ask for a filing requirement for the other reports that CTCO files each week (terminal forecast indicator, terminal historical indicator, and average freight transit time). ACC’s request for yard dwell, meanwhile, rests on a single member’s belief that its cars are being bunched somewhere in East St. Louis.⁸ Such anecdotal claims should not be used as the justification for the imposition of further reporting burdens on all railroads operating at these gateways.

ACC’s filing also illustrates that misconceptions continue to exist regarding the utility of railroad performance metrics. ACC writes that its members need standardized reporting to compare a railroad’s “performance to its historical performance and other carriers’ performance.”⁹ The AAR has repeatedly explained that the utility of railroad service data is

⁶ See ACC Petition at 8, 17-18; ACC Comments at 8. It is worth noting that ACC members acknowledge that they have competitive options to move their traffic. See ACC Comments at 8 (claiming that the requested trains-held metric “will provide insight into which carriers at each Gateway are having difficulty accepting trains and should be avoided.”).

⁷ ACC Comments at 8.

⁸ *Id.*

⁹ ACC Comments at 5.

limited to identifying changes and trends on a particular railroad; the data cannot be reliably used to understand causality, to compare rail performance across different commodities or time periods, or to compare railroads.¹⁰ Changing markets and traffic mix makes comparing even a single railroad's metrics over time perilous. Historical data captures a snapshot in time; the same metrics, on the same railroad, related to the same commodity captured at different times may not offer valid comparisons of railroad service because of changes in markets, rail investment in infrastructure, labor slowdowns at ports, weather or other factors. The Board expressed confidence in the past that "stakeholders recognize that there are significant differences between railroads as to geography, network, customer base, traffic volumes, resources, operating practices, and business philosophy."¹¹ But ACC's comments reveal that there is continued misunderstanding that reported data can be used to compare performance across railroads or to compare a railroad's performance over time.

Finally, ACC withdrew its request for individual railroad reporting of Chicago terminal dwell time upon realizing that CTCO already reports weekly average terminal dwell in hours for 11 individual Chicago yards, as well as an average of the group. ACC claims to have now "discovered a disconnect" between the current reporting practice and the Chicago terminal reporting rule.¹² But the "disconnect" is merely the text of the Board's decision that accepted the AAR's offer to voluntarily report the metrics that were already being shared with Chicago

¹⁰ See AAR Reply, *United States Rail Service Issues—Performance Data Reporting*, EP 724 (Sub-No. 4) (filed April 25, 2015).

¹¹ *United States Rail Service Issues—Performance Data Reporting*, EP 724 (Sub-No. 4), slip op. at 22 (STB served April 29, 2016).

¹² ACC comments at 12.

stakeholders.¹³ Those metrics were reportable to stakeholders in Chicago and to the Board because of the extensive work that had previously been done in Chicago, which was detailed in the AAR's May 6 submission. The Board should not now take that voluntary report and codify it into an administrative rule and bind the parties in perpetuity; instead the Board should allow the railroads and Chicago stakeholders the flexibility to change reports as business and technology changes warrant, without having to come back to the Board and petition it to begin a rulemaking proceeding.

Conclusion

Based on the foregoing and other AAR submissions in this proceeding, the ACC petition for rulemaking should be denied and this proceeding discontinued.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'K. Kirmayer', with a long horizontal flourish extending to the right.

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¹³ *U.S. Rail Service Issues – Performance Data Reporting*, EP 724 (Sub-No. 4), slip op. at 22-23 (STB served Nov. 30, 2016).

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that I have contacted the party of record in this proceeding, American Chemistry Counsel (“ACC”), and confirmed its consent to service by electronic mail. I further certify that I have caused a copy of the Association of American Railroads’ filing to be served on ACC at the address below:

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Timothy J. Strafford

May 20, 2019