

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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Public Record

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

REPLY OF THE ASSOCIATION
OF AMERICAN RAILROADS

The Association of American Railroads (“AAR”) hereby replies in opposition to the petition for rulemaking filed by the American Chemistry Council (“ACC”) on December 6, 2018 in the above-captioned docket (“ACC petition”).¹

Nearly five years after the Surface Transportation Board (“STB” or “Board”) began to gather input from stakeholders on monitoring rail service issues, ACC now asks the Board to reopen final rules and impose additional reporting requirements on railroads. Specifically, ACC asks the Board to: (1) impose a new chemical-specific category to the cars held for more than 48 hours report under 49 C.F.R. §1250.2(a)(6); (2) require all Class I, terminal and switching railroads operating in Chicago to report weekly average terminal dwell time, measured in hours, in addition to reports filed by the Chicago Transportation Coordination Office (“CTCO”) that already report dwell times in Chicago; and (3) require railroads operating in New Orleans, East St. Louis, and Memphis to jointly report average daily car volumes for specific yards, average daily number of trains held for delivery (sorted by carrier), and terminal dwell time. As

¹ The due date for this reply would have been December 26, 2018, but for a partial government shutdown that tolled all due dates for filings with the Board. To the extent necessary, the AAR requests leave to file at this time.

explained below, the Board should deny the petition because ACC has failed to demonstrate that their requested custom reporting would provide any public benefits that would justify the additional costs it would impose on railroads.

ARGUMENT

I. The Board Should Not Impose Additional Granular, Commodity-Specific Reporting Requirements.

Throughout the rulemaking process leading up to the final rules, AAR consistently raised concerns that narrowly focused commodity-specific granular level reporting requirements would present distorted views of overall rail service and incentivize litigation by interest groups seeking to prioritize certain favored business or commodities through political influence rather than sound and safe railroad operations. *See, e.g.*, AAR letter, EP 724 (filed Nov. 11, 2014). Such concerns were also echoed by shipper interests. *See, e.g.*, NGFA Opening Comments, EP 724 (Sub-No. 4) at 4 (filed Mar. 2, 2015) (“NGFA believes it is unwise and counterproductive for any segment of rail traffic – including agriculture – to seek a general regulatory preference or priority designation over other industry sectors.”). Indeed, the focus on specific commodities and the exclusion of others in some of the proposals in the initial Notice of Proposed Rulemaking in EP 724 (Sub-No. 4) caused interest groups representing shippers of some commodities to seek additional, commodity-specific reporting. *See, e.g.*, TFI Opening Comments, EP 724 (Sub-No. 4) (filed Nov. 11, 2014); Coal Shippers Opening Comments, EP 724 (Sub-No. 4) at 12 & n. 15 (filed Nov. 11, 2014); *see also* letter from National Pasta Association, EP 724 (filed Dec. 17, 2014). In response to the extensive record compiled in the rulemaking proceeding, the Board noted in the final rules that it was not adopting shippers’ requests for granular data covering discrete subsets of traffic, specific corridors or local operations, instead seeking to strike the proper regulatory balance. *United States Rail Service Issues – Performance Data Reporting*, EP

724 (Sub-No. 4), slip op. at 7 (STB served Nov. 30, 2016). The Board should not reverse course now and begin adding additional commodity-specific reports. Granting ACC's petition here would no doubt open the door to renewed requests for ever more granular reporting.

Continuous changes to the Board's reporting rules would impose ongoing costs to railroads that would need to make programming changes to their systems to enable compliance. The AAR has consistently raised concerns about piece-meal, ad hoc adjustments to reporting requirements regarding specific commodities. *See, e.g.*, AAR letter, EP 724 (filed Nov. 11, 2014). When counsel for the Fertilizer Institute ("TFI") filed a petition for reconsideration to the final rules, indicating that TFI had inadvertently omitted a seven-digit STCC code from the definition of fertilizer for reporting purposes, the AAR did not object, but pointed out that "[a]ny further changes to the list of required STCC codes for reporting will necessitate additional programming changes and impose other costs on rail carriers for reports of limited utility in the first place. TFI and other shippers have had nearly three years to weigh in on rail service reporting and the Board should not amend the rules any further without a demonstration of compelling need." AAR Reply, EP 724 (Sub-No. 4) (filed Jan. 7, 2018). Similarly, ACC had ample opportunity to advocate for chemical-specific reporting during the formulation of the final rules. ACC participated in the EP 724 hearing on April 10, 2014, and filed comments in EP 724 (Sub-No. 4) specifically in response to the Board's proposed service reporting rules, but did not propose the metrics requested now. Certainly, the importance of STCC-28 traffic has not changed since that time and ACC has not demonstrated any service issues unique to that traffic. The Board should not now open another rulemaking proceeding to accommodate ACC.

The Board should not impose any additional reporting costs on railroads without a clear showing of public benefits tied to the Board's statutory authority. As AAR has made clear in

other submissions, metrics of railroad operations do not convey the full picture of a globalized supply chain that involves shipping companies, trucking companies, ports, shippers, receivers, and third-party intermediaries. Narrow focus on subsets of rail traffic can remove important context and, as such, granular reports are of limited benefit. Commodity-specific reporting is particularly susceptible to this type of distortion and therefore provides little useful information to the Board about the performance of railroads and the fluidity of the national rail network. The chemical-specific car-held metric proposed by ACC will necessarily reflect factors outside a railroads' control. Cars containing chemicals are held at times according to plan, and may not reflect a service disruption at all. Indeed, ACC notes that "many producers and receivers of STCC-28 traffic store their production railcars pending sale or consumption." ACC Petition at 8.

The Board struck a reasonable balance in the final rules by requiring macro-level measures of railroad performance with enough granular detail so as to be responsive to shipper requests. ACC has not demonstrated a need to reopen that balance for additional chemical-specific reporting.

II. ACC Has Failed to Demonstrate the Public Benefit of Additional Chicago Reporting.

ACC's request for individual railroad reporting of Chicago terminal dwell time is unnecessary and should be rejected. It is unclear from the petition why the current reporting by CTCO and individual railroads is insufficient for ACC. CTCO currently reports weekly average terminal dwell in hours for 11 individual Chicago yards and an average of the group. The CTCO reports encompasses the six Class I railroads and both terminal and switching railroads that operate in Chicago. CTCO reports dwell times for BNSF Railway (Corwith, Cicero); the Belt Railroad of Chicago (Clearing); Canadian National Railway (Markham, Kirk); Canadian Pacific (Bensenville), CSX Transportation (Barr); Indiana Harbor Belt Railroad (Blue Island, IHB

Autos); Norfolk Southern Railway (Calumet); and Union Pacific Railroad (Proviso). ACC appears to be concerned that the six Class I railroads that operate in Chicago do not also include a separate Chicago line item in their terminal dwell report under 49 C.F.R. § 1250.2(a)(2). But that rule requires a report of the carriers' ten largest terminals in terms of cars processed. ACC offers no explanation why the yard information included in the CTCO report is insufficient for the Board to track Class I dwell times in Chicago or what added benefit the additional reporting would confer.

Thus, ACC has failed to show how the existing reports are insufficient to meet the Board's stated primary goal of generally monitoring the operations and performance of Class I railroads and the fluidity of the Chicago gateway. ACC generally asserts that its members use the existing data to identify and monitor service issues, make planning decisions, and engage in collaborative discussions. ACC Petition at 4. But ACC offers no support for its assertion that its proposed additional reporting requirements will provide more insight into rail service issues or that such rule changes would meet the objective of mitigating harm to shippers or facilitating faster and smoother recoveries. ACC Petition at 5. As such, the Board should not propose any additional Chicago reporting.

III. Joint Mississippi Gateway Reporting is Unnecessary to Meet the Board's Statutory Responsibilities and Would Be Unduly Burdensome.

ACC's request for joint reporting in East St. Louis, Memphis and New Orleans similar to the required Chicago reporting should also be rejected because ACC has not established the benefits to the Board of such reporting and because such joint reporting would be burdensome to produce. The AAR has previously filed information on behalf of the Class I railroads that serve Chicago about the unique efforts undertaken by those railroads to keep Chicago fluid. The Chicago Planning Group ("CPG") was formed to facilitate improvements to rail operations

within the Chicago Complex and consists of: AMTRAK, Belt Railway Company of Chicago, BNSF Railway, CN Railway, CP Railway, CSX Transportation, Indiana Harbor Belt Railroad, METRA, Norfolk Southern Railway, Union Pacific Railroad (collectively, “Chicago Railroads”). Through CTCO and the Chicago Integrated Rail Operations Center (“CIROC”), the Chicago Railroads monitor and facilitate efficient operations in Chicago. What began as a manual, labor-intensive sharing of information between railroad operating personnel has been automated somewhat in recent years. Such efforts have been taken at great time and expense because of the importance of Chicago to the national freight network. Nearly 25% of the nations’ freight rail traffic flows through Chicago. Moreover, Chicago’s extensive passenger and commuter operations require constant coordination among all of the railroads that operate there.

As such, there was an administrative framework among the railroads already in place in Chicago when the Board proposed to require joint reporting in 2014. A similar framework does not exist today for the Mississippi gateways named by ACC because there are lower volumes, fewer carriers operating at those gateways, and fewer connections between railroads leading to fewer issues that cannot be resolved bilaterally. Those terminals also have far less extensive passenger and commuter operations compared with Chicago. Simply put, the Mississippi gateways named by ACC do not have the national implications Chicago does. Indeed, in seeking to include terminal and switching railroads in its proposal, ACC notes that East St. Louis, Memphis and New Orleans do not have an equivalent of the CTCO. ACC Petition at 13. Any joint service report would therefore need to be built from the ground up from data from individual carriers. Such an effort would be burdensome to undertake, involving different carriers at different gateways. ACC has not justified imposing this burden on the railroads operating at those terminals.

CONCLUSION

For the foregoing reasons, the Board should deny the petition for rulemaking filed by ACC.

Respectfully submitted,

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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’ reply to be served on ACC at the address below:

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/s/ Timothy J. Strafford
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