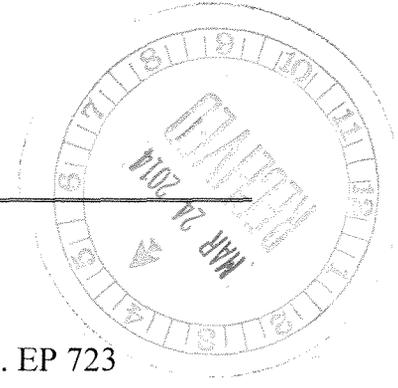


EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD



PETITION OF THE WESTERN COAL)
TRAFFIC LEAGUE TO INSTITUTE A)
PROCEEDING TO ADDRESS THE)
ADEQUACY OF COAL TRANSPORTATION)
SERVICE ORIGINATING IN THE WESTERN)
UNITED STATES)
)

Docket No. EP 723

**PETITION OF THE WESTERN COAL TRAFFIC LEAGUE
TO INSTITUTE A PROCEEDING TO ADDRESS THE ADEQUACY OF
COAL TRANSPORTATION SERVICE ORIGINATING IN THE WESTERN
UNITED STATES**

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WESTERN COAL TRAFFIC LEAGUE

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Dated: March 24, 2014

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

PETITION OF THE WESTERN COAL)	
TRAFFIC LEAGUE TO INSTITUTE A)	
PROCEEDING TO ADDRESS THE)	
ADEQUACY OF COAL TRANSPORTATION)	Docket No. EP 722
SERVICE ORIGINATING IN THE WESTERN)	
UNITED STATES)	
)	

**PETITION OF THE WESTERN COAL TRAFFIC LEAGUE
TO INSTITUTE A PROCEEDING TO ADDRESS THE ADEQUACY OF
COAL TRANSPORTATION SERVICE ORIGINATING IN THE WESTERN
UNITED STATES**

BNSF Railway Company's ("BNSF") well-publicized service problems in the western coal transportation market place have worsened; show no signs of abating; and are beginning to adversely impact service provided by other western rail carriers. The Western Coal Traffic League ("WCTL")¹ asks that the Board institute a formal proceeding to investigate BNSF's service problems and to take two actions immediately: (1) institute a public hearing to address the problem of BNSF's service failures and (2) order BNSF to submit periodic public filings in this proceeding containing pertinent coal

¹ WCTL is a voluntary association, whose regular membership consists entirely of shippers of coal mined west of the Mississippi River. WCTL members currently ship and receive in excess of 140 million tons of coal by rail each year. This Petition is filed pursuant to 49 C.F.R. § 1117.1 (petitions for relief not otherwise covered) and, as discussed below, invokes the Board's regulatory jurisdiction under 49 U.S.C. § 721(b)(3) (granting the Board the oversight authority over rail operations, including the power to obtain information from rail carriers) and 49 U.S.C. § 11145(a)(1) (granting the Board the authority to require carries to file "special reports with the Board containing answers to questions asked by it").

service metrics, as well as any service recovery plan that BNSF has developed. In support hereof, WCTL states as follows:

BACKGROUND

On March 14, 2014, WCTL informed the Board that BNSF's service problems had reached crisis proportions for numerous BNSF coal transportation customers. *See* Letter from Bette Whelan, WCTL President, to Hon. Daniel R. Elliott III, STB Chairman ("WCTL Letter"). In this Letter, WCTL summarized the dire circumstances faced by its members:

[WCTL] is deeply concerned about [BNSF's] ability to deliver coal now and in the coming summer months. WCTL's electric utility members are charged with "keeping the lights on." BNSF's continuing service failures threaten this mission. Indeed, many of WCTL's members fear they will run out of coal, if not now, by summer. Given the critical need for reliable electric service, WCTL is compelled to advise the Board of the dire circumstances its members are facing.²

WCTL also provided specific examples of how the collapse in BNSF service is adversely impacting utility coal shippers, and their utility customers:

1. Precariously low stockpiles – often dipping below 10 days.
2. Forced price increases into electric markets to protect limited coal stockpiles.
3. Increased electric costs as a result of reduced coal-fired generation and its replacement with higher priced generation – additional costs for one utility were several million dollars in January alone.
4. Attempts to rebuild coal piles have been unsuccessful as BNSF moves from one inventory "fire" to the next.
5. Lack of train sets for shippers using railroad-provided cars.

² WCTL Letter at 1.

6. Some WCTL members expect that lack of coal in the upcoming hot summer months will cause many plants to shut down.³

Finally, WCTL expressed its concerns about the lack of transparency concerning BNSF's recovery plans:

Lack of transparency into BNSF's recovery plans is also frustrating WCTL's members. All of our members are in regular contact with BNSF personnel – some are even talking on a regular basis to the highest levels of BNSF – but no clear path forward is evident. BNSF's public statements provide little detail as well, except that BNSF acknowledges that it let its customers down in 2013, and it has described a 24-hour war room mentality that it is applying to solving its problems.⁴

Since WCTL wrote its Letter, there has been no improvement in BNSF's service. Indeed, BNSF's service to its coal shippers is worsening as BNSF's service problems are spilling over to adversely impact the operations of other western carriers, including Union Pacific Railroad Company. While BNSF has recently proclaimed certain, general statistical service improvements, the fact remains that its western coal transportation customers continue to suffer from severe shortages of service.

REQUESTED ACTIONS

The Board is well aware of BNSF's service problems and has taken proactive informal actions, which included the Board's request, made early last month, that BNSF officials meet privately with the Board to discuss "this serious matter."⁵ At that time, the Board observed that "BNSF's current service problems are unusual and already

³ *Id.* at 2.

⁴ *Id.*

⁵ See Letter from Chairman Elliott and Vice Chairman Begeman to BNSF President and Chief Executive officer Carl Ice dated February 5, 2014 at 2.

have had a serious impact on customers.”⁶ In addition, WCTL is aware that some shippers have sought informal Board intervention through the Board’s Rail Customer and Public Assistance Program, which is presumably attempting to provide assistance.

These are positive steps. However, they have not solved the problem for coal shippers. More is required.

A. Institute a Formal Proceeding

WCTL requests that the Board take a necessary first step: institute a formal proceeding to address BNSF’s inability to meet the demands for coal transportation. The Board clearly has the authority to institute investigations on matters of public importance involving regulated rail carriers,⁷ and has not hesitated in the past to institute proceedings to address critical transportation issues of regional, or industry-wide significance,⁸

⁶ *Id* at 1.

⁷ See 49 U.S.C. § 721(b)(1) (granting the Board oversight authority over rail operations).

⁸ See, e.g., *Rail Fuel Surcharges*, Docket No. EP 661 (Notice served Mar. 14, 2006) (instituting proceeding to address railroad fuel surcharge practices) (“*Rail Fuel Surcharges*”); *Twenty-Five Years of Rail Banking: A Review and Look Ahead*, Docket No. EP 690 (Notice served May 21, 2009) (instituting a proceeding to address rail banking under the National Trails System Act) (“*Rail Banking*”); *Review of the Surface Transportation Board’s General Purpose Costing System*, Docket No. EP 431 (Sub-No. 3) (Decision served Apr. 25, 2009) (instituting a new sub-docket to address rail costing issues) (“*General Purpose Costing System*”); *Policy Alternatives to Increase Competition in the Railroad Industry*, Docket No. EP 688 (Notice served Apr. 14, 2009) (“*Competition Policy*”) (instituting a proceeding to address railroad competition issues); *Common Carrier Obligation of Railroads – Transportation of Hazardous Materials*, Docket No. EP 677 (Notice served Feb. 22, 2008) (instituting a proceeding to address railroad common carrier obligations) (“*Hazardous Materials*”); *Rail Capacity and Infrastructure Requirements*, Docket No. EP 671 (Notice served Mar. 6, 2007) (instituting a proceeding to address rail infrastructure issues) (“*Rail Infrastructure*”).

including those addressing wide-spread service failures in the western coal transportation marketplace.⁹

The Board's initiation of a formal proceeding addressing western coal transportation failures is particularly important because, as the Board has emphasized in the past, reliable coal transportation service is critical to the nation's economic and national security:

The Board views the reliability of the nation's energy supply as crucial to this nation's economic and national security, and the transportation by rail of coal and other energy resources is a vital link in the energy supply chain.¹⁰

The fact that this "crucial" supply chain is threatened requires formal and immediate investigation by the Board. *Accord Discussions with Utility and Railroad Representatives on Market and Reliability Matters*, FERC Docket No. AD06-8-000, 71 Fed. Reg. 33746 (June 12, 2006) (FERC institutes formal docket to address coal transportation service deficiencies threatening electric utility reliability in the west).

⁹ See *Rail Service in the Western United States*, Docket No. EP 573 (Decisions served Oct. 2 and October 16, 1997) ("1997 Rail Service"); *Rail Transportation of Resources Critical to the Nation's Energy Supply*, Docket No. EP 672 (Notice served June 6, 2007) ("2007 Rail Service")

¹⁰ See *Establishment of a Rail Energy Transportation Advisory Committee*, Docket No. EP 670 (Decision served July 17, 2007) at 2.

B. Hold a Public Hearing

Following the initiation of formal proceedings, the Board usually holds public hearings to address involved issues.¹¹ The Board should do the same here – and do so promptly – given both the urgency of the situation and BNSF’s prior representations to this Board.

BNSF represented to the Board last year that it was well positioned to provide reliable service in 2014,¹² but obviously the current problems in the western coal transportation markets demonstrate that BNSF has not been able to fulfill its representations. A public hearing will afford the Board – and the public – the opportunity to learn why BNSF has failed to follow through on its representations.

WCTL is particularly interested in obtaining BNSF’s answers to three critical questions: (i) why these problems came about; (ii) how long it expects the problems to last; and (iii) what it is going to do to fix it. To the best of WCTL’s knowledge, BNSF management has not publicly provided the Board, or its customers, with answers to these three basic questions. BNSF’s customers, and the Board, deserve answers – on the record.

In addition, a public hearing can assist the Board in developing the record necessary to determine whether it needs to take any formal remedial actions to assist coal

¹¹ See, e.g., *1997 Rail Service*; *2007 Rail Service*; *Rail Fuel Surcharges*; *Rail Banking*; *General Purpose Costing System*; *Competition Policy*; *Hazardous Materials*; *Rail Infrastructure*.

¹² See Letter from then-BNSF CEO Matthew K. Rose to the Board members dated August 22, 2013.

shippers in desperate need of service and, if so, what actions would best assist coal shippers. *See, e.g., Joint Petition for Service Order*, Service Order No. 1518 (Decisions served Oct. 31 and Dec. 4, 1997, and February 25, 1998) (STB issues remedial service orders following public hearings on 1997 service crisis in the west).

C. Collect Service Data

Coal shippers need more information to assess the scope of the current problems and to determine whether any BNSF efforts to improve service can work. The Board clearly has the authority to order rail carriers to provide service related data that would help to answer coal shippers' informational needs.¹³

WCTL requests that the Board exercise its data collection authority and direct BNSF to publicly report at least the following information on a weekly:

1. Detailed information on implementation (including timing) of BNSF's service recovery plan, if any exists, insofar as it involves coal shippers;
2. The actual number of coal cars loaded and the number of coal cars requested to be loaded;
3. The average number of coal trainsets presently in service, broken down between shipper-supplied (private) trainsets and BNSF-supplied trainsets;
4. Any restrictions on utilization of shipper-provided equipment in BNSF coal service;
5. Any restrictions on the availability of train crews for coal service;
6. Any shortages in locomotive power available for coal service; and

¹³ *See* 49 U.S.C. § 49 U.S.C. § 721(b)(3) (Board may obtain information from regulated carriers); 49 U.S.C. § 11145 (Board may obtain "special reports" from regulated carriers "containing answers to questions asked by it"); *Rail Service* (Decisions served Oct. 16 and Nov. 21, 1997) and *Joint Petition for Service Order*, Service Order No. 1518 (Decision served Dec. 4, 1997) (directing rail carrier to file weekly reports covering more than 20 operational categories in response to on-going rail service crisis).

7. Average cycle times for coal trains operating over any portion of the routes between mine origins in Wyoming and Montana and (a) Council Bluffs, IA; (b) Chicago, IL; (c) Minneapolis/St. Paul, MN and/or Superior, WI; (d) Kansas City, MS; and (e) Fort Worth, TX.

WCTL believes that the requested information also should aid the Board in its independent monitoring of the crisis and, in conjunction with the requested hearing, provide the Board with data it needs to determine whether to issue specific remedial orders.

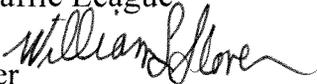
CONCLUSION

WCTL respectfully requests that the Board grant this Petition for the reasons set forth above.

Respectfully submitted,

WESTERN COAL TRAFFIC LEAGUE

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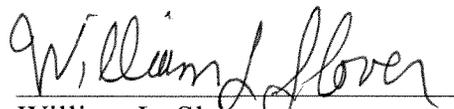
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Dated: March 24, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this 24th day of March, 2014, caused a copy of the foregoing Petition to be served by overnight delivery service upon:

Roger Nober
Executive Vice President, Law & Corporate Affairs
BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, TX 76131



William L. Slover