BEFORE THE SURFACE TRANSPORTATION BOARD

STB Docket No. EP 767

FIRST-MILE / LAST-MILE SERVICE

Reply Comments of
the American Chemistry Council, American Fuel & Petrochemical Manufacturers, and The Fertilizer Institute

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The American Chemistry Council (ACC), American Fuel & Petrochemical Manufacturers (AFPM), and The Fertilizer Institute (TFI) (collectively, Joint Shippers)[1] submit these reply comments pursuant to the Surface Transportation Board's decision served on September 2, 2021, that requests comments on first-mile/last-mile (FMLM) service.

FMLM reporting will provide critical insight into FMLM performance without unduly burdening railroads. FMLM performance has significant consequences for rail customers and the rail network, yet railroads provide almost no meaningful FMLM performance information. This prevents rail customers and the Board from readily identifying FMLM issues so that they can be addressed. FMLM performance reporting by railroads would address this problem while placing little additional burden on railroads because they already collect a significant portion of the data that would inform the reporting, effective reporting can be basic, and reporting would not require divulging confidential information. FMLM reporting rules thus could provide significant benefits, far outweighing any cost.

Additionally, shippers and government stakeholders are generally aligned on a workable framework for FMLM reporting. Their comments suggest that effective FMLM reporting would convey overall transit performance, FMLM operating

[1] In their opening comments, Joint Shippers and another group of trade associations each referred to themselves as Shipper Associations. To avoid confusion between the groups, ACC, AFPM, and TFI will refer to themselves as Joint Shippers in this proceeding.

performance (e.g., missed switches and dwell times), and FMLM service-fulfillment performance (e.g., switching errors and unfulfilled switches related to orders or releases). This alignment indicates that the Board could develop FMLM reporting that a wide range of rail customers would find useful. Also, since Joint Shippers' recommended reporting generally captures these areas of alignment, the Board should consider using that recommendation as a starting point for developing FMLM reporting requirements.

I. FMLM reporting is necessary.

Although FMLM service plays a critical role in rail transportation, railroads provide their customers and the Board almost no meaningful FMLM performance information to readily identify FMLM issues. To correct this problem and provide the Board and rail customers with an adequate opportunity to address FMLM issues, the Board should adopt FMLM reporting.

A. FMLM service is a critical element of rail transportation.

The Association of American Railroads (AAR) and BNSF Railway claim that FMLM reporting is unnecessary because, in their view, no material FMLM service problems exist.[2] This ignores the critical role that FMLM service plays in rail transportation, which alone justifies FMLM reporting. It also ignores information from shippers and rail labor identifying serious FMLM issues currently affecting the rail network.

[2] (AAR Comments 4, 5; BNSF 10.)

Serious FMLM service issues exist. While AAR and railroad executives and attorneys may claim that FMLM service is fine, frontline railroad employees are sounding the alarm. Rail labor groups representing employees at all the Class I railroads have filed comments explaining that railroads have cut staff and made other operational changes that have caused FMLM service to deteriorate.[3] Additionally, in a recent survey by the American Chemistry Council, 60% of respondents that use rail transportation report missed switches; 46% report reduced service days.[4]

Even if current FMLM problems did not exist, the critical role that FMLM service plays in rail transportation warrants FMLM reporting that allows the Board and shippers to readily identify and address FMLM issues when they do arise. BNSF explains that FMLM service is a critical element of rail transportation, stating that "providing reliable service between our local serving yards and our customers' facilities is a critical component of our overall competitive service offering."[5] As Joint Shippers have explained, FMLM service failures typically add days to expected transits and service events. These service impacts place railroad customers in jeopardy of operational disruptions while they wait for delayed cars.[6]

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[3] (Rail Union Comments 2-4.)

[4] Am. Chemistry Council, *Survey Report: Supply Chain & Freight Transportation Constraints for Chemical Manufacturers* 11 (2022), https://www.americanchemistry.com/media/files/acc/better-policy-regulation/transportation-infrastructure/infrastructure/supply-chain-and-freight-logistics-survey-findings-report.

[5] (BNSF Comments 1.)

[6] (Joint Shippers Comments 7-8).

They also can inundate rail customers' facilities with railcars, causing demurrage and storage charges.[7] And they increase shippers' railcar fleet and related infrastructure needs.[8] Given these serious consequences of an FMLM problem, waiting to implement FMLM reporting until a problem arises would be unwise.

FMLM reporting also facilitates the Board's oversight of rail-service issues. Congress gave the Board power to direct rail service and take other actions to promote rail service if the Board determines that a "failure of traffic movement" creates an emergency situation.[9] Also, under the Board's regulations, the Board will prescribe alternative rail service if it determines that existing service is inadequate.[10] Additionally, the Rail Transportation Policy guides the Board "to ensure the development and continuation of a sound rail transportation system . . . to meet the needs of the public and the national defense" and "to encourage honest and efficient management of railroads."[11] It is unclear how the Board can effectively carry out its oversight role without timely and meaningful FMLM reporting that allows it to readily identify FMLM issues. Additionally, shippers will have difficulty accessing service remedies for FMLM problems without credible FMLM performance data. FMLM reporting would provide shippers with important

[7] (*Id.* at 8.)

[8] (*Id.* at 26, 27, 28.)

[9] 49 U.S.C. § 11123.

[10] 49 C.F.R. § 1147.1(a).

[11] 49 U.S.C. § 10101(4), (9).

FMLM performance information for seeking service-related remedies, and the information would have credibility because it is produced by railroads.

At bottom, FMLM reporting is warranted because it will allow the Board and rail customers to credibly identify FMLM issues, which can cause serious harm to rail customers.

B. The FMLM information railroads provide to their customers conveys little about FMLM performance levels.

Railroad commenters broadly claim that they provide their customers a panoply of FMLM data. Yet only one railroad commenter identified an FMLM data element that it provides customers and directly conveys meaningful information about FMLM performance, and it is only a single data element.

The problem with the nearly all the data that railroad commenters say they provide is that it does not directly identify switch performance.[12] Missed switches (i.e., failing to provide a switch on a serving day) and switch-fulfillment errors (i.e., switching the wrong car or not switching every car that was ordered or released) are the key FMLM events that directly impact rail customers. Yet, to show they provide

[12] Shipper Associations state that shippers are aware of their FMLM service experience and can access shipment-level information from railroad websites. (Shipper Ass'ns Comments 24.) Joint Shippers understand these statements as referring to unit-train shippers, which are a large portion of Shipper Associations' members. Because unit-train traffic is not subject to the extensive FMLM switching operations that apply to carload traffic, unit-train shippers likely have less need for FMLM switch-performance information. Regardless, the shipment-level information that railroads provide fails to include almost any direct information about FMLM switch performance. And Joint Shippers' members report that railroads generally brush off member-generated data, often making an apples-to-oranges comparison to the railroad's metrics. FMLM reporting containing standardized metrics and switch-performance data would address these issues.

FMLM performance data, railroad commenters point mainly to their track and trace data, which does not show switch performance. Railroads also point to switch cutoff times, service dates, and expected arrivals on service dates, but these data provide no information about actual service performance, let alone switch performance. For example:

- BNSF says it provides customers carload tracking information, spot cut-off times, and expected number of cars that will be delivered on future service dates.[13] But carload tracking data does not include critical switch performance data, such as cancelled switches or switch errors. And cut-off times and expected arrivals do not indicate anything about actual service performance.
- Canadian National Railway says it offers an FMLM tool that provides a snapshot of a facility's inbound cars, outbound cars, and car inventory.[14] CN also explains that its My Shipments and Quick Trace tools provide shipment-level status information.[15] And it says that it provides tools that allow customers to view current order in or release status and track equipment by order and local service window. While these tools convey car location, shipment events, and cutoff dates, none of them identify CN's switch performance at a customer location.

[13] (BNSF Comments at 8-9.)

[14] (CN Comments 3-4.)

[15] (*Id.* at 5.)

- CSXT says it provides track and trace tools that identify car status and events.[16] But it fails to describe any tool that identifies switch performance at a customer location.
- Norfolk Southern Railroad says that it offers a customer dashboard that summarizes the status of a customer's shipment pipeline and provides service projections.[17] It also offers a track and trace tool to help customers track a shipment's location.[18] And it provides a map showing the location of a customer's railcars.[19] But NS does not identify any information it provides to customers that quantifies NS's switch performance at a customer location.

While BNSF appears to generate two metrics directly related to FMLM service, adjustments to these metrics are necessary to convey FMLM performance to customers. BNSF states that it provides an aggregate local-service performance metric showing adherence to FMLM service plans,[20] but it criticizes aggregate metrics like this as having limited value.[21] BNSF also touts its industry service metric that measures adherence to each customer's individualized FMLM service plan, but this is an internal metric.[22] Additionally, BNSF's formulas for calculating

[16] (CSXT Comments at 2-4.)

[17] (NS Comments 3-4.)

[18] (*Id.* at 4-5.)

[19] (*Id.* at 6.)

[20] (BNSF Comments 5-6.)

[21] (*Id.* at 11-13.)

[22] (*Id.* at 4-5.)

these metrics are unclear, which makes these metrics ambiguous to customers. If these metrics were tied to an individual aspect of switch performance, their underlying formulas were clear, and they were facility-specific—similar to Joint Shippers' suggested Serving Day Performance metric—they could potentially be a valuable aspect of FMLM reporting.

To CN's, CSXT's, and KCS's credit, they provide on-time performance information.[23] As Joint Shippers explained, this information is helpful to understand the impact that FMLM performance has on expected overall transit.[24] But because this information does not directly indicate FMLM performance, it is not useful unless viewed alongside other railroad performance data. If this information is paired with other performance data and standardized across railroads—like Joint Shippers' suggested On-Time Placement Percentage and On-Time Placement Variation metrics—it would be an important element of FMLM reporting.

KCS is the only railroad that indicated it provides switch performance information to customers. This information is "AP/Pull%," which measures the cars that were scheduled to be spotted at or pulled from a customer facility on a particular day against the cars actually spotted or pulled.[25] With some adjustments, it could be suitable for broad FMLM reporting. Specifically, it should be defined to cover all cars ordered or released prior to the cutoff time for each serving day. This

[23] (CN Comments 6; CSXT Comments 5-6; KCS Comments 3.)

[24] (Joint Shippers Comments 19.)

[25] (KCS Comments 3.)

would eliminate ambiguity about whether the cars scheduled for spotting or pulling are those that the customer timely ordered or released. Additionally, it should be split to cover ordered and released cars separately because issues impacting each type of car may not impact the other. For example, a railroad might not serve a released car because of insufficient local train capacity, but this is not likely an issue for cars that will be delivered. Conversely, a railroad might select the wrong car for delivery, but this is not likely for released cars, since they are typically set out for the railroad to pull. Joint Shippers' suggested Switch-Delivery Percentage and Switch-Origination Percentage metrics are examples for how AP/Pull% could be adopted for FMLM reporting.

Ultimately, few railroads provide customers with any information that conveys FMLM performance. And most of this information indicates FMLM performance only indirectly.

C. FMLM reporting would help stakeholders identify FMLM service problems so they can be investigated and addressed.

Many railroad commenters claim that FMLM reporting is not helpful unless it accounts for non-railroad factors that contribute to the reported performance. This criticism overlooks that the primary purpose of FMLM reporting is to identify FMLM problems in the first place so that they can be investigated and addressed.

The first step toward addressing any FMLM service problem is obtaining the data necessary to identify it. Take this proceeding. AAR criticizes the Board for

issuing its request for information without articulating a problem to address.[26] But how is the Board supposed to determine whether and what action is warranted regarding FMLM service without first requesting information that will help it identify whether FMLM problems exist or whether FMLM service is so critical that reporting is prudent? Rail customers face a similar problem—they cannot identify and take action to address FMLM issues without FMLM information to identify them. So, if "[t]he first step in articulating a need for action is to identify the problem,"[27] the Board and rail customers will not be able to address an FMLM problem without FMLM reporting that identifies FMLM performance issues.

Designing FMLM reporting to account for all the factors that may impact FMLM performance, however, will detract from identifying FMLM performance issues. It inherently introduces subjective decisions into the reported data, undermining its credibility. For example, railroads observe that reporting should account for weather events that impair FMLM service.[28] But the extent to which weather events impair service has a large subjective component. In some cases, the key driver of FMLM performance after a weather event may be the railroad's reaction to or preparation for the event, not the event itself. The railroad would have an incentive to underplay its own contribution to its FMLM performance, and

[26] (AAR Comments 5.) By suggesting that reporting may be part of the solution to FMLM service issues and seeking comments on potential reporting, the Board did not skip past determining whether a problem actually exists.

[27] (*Id.* at 4.)

[28] (BNSF Comments 2; NS Comments 11.)

this could lead to inaccurate data concerning the factors underlying the railroad's FMLM performance.

Additionally, the notion that FMLM reporting could account for all the factors that might impact FMLM performance is unrealistic. Several railroad commenters observe that a wide range of local factors impact FMLM service.[29] Railroads also observe that events far removed from their FMLM service may nonetheless impact it.[30] How any reporting could accurately account for all these factors and still fulfill its primary purpose of identifying FMLM service issues is unclear.

Ultimately, FMLM reporting will achieve its primary purpose of allowing the Board and rail customers to spot FMLM issues by identifying FMLM performance. If this performance indicates an issue, interested parties can investigate and address the cause of the issue.

II. FMLM reporting will not impose an undue burden on railroads.

The Board can implement effective FMLM reporting without imposing any undue burdens on railroads. Comments by railroad parties and rail labor indicate that railroads already collect a significant portion of the data necessary for meaningful FMLM reporting. Additionally, basic FMLM reporting would leave ample room for railroad competition and innovation to produce enhanced FMLM reporting. And the two-tiered reporting approach that Joint Shippers have

[29] (AAR Comments 2-4; BNSF Comments 10; NS Comments 11.)

[30] (AAR Comments 2; BNSF Comments 12; NS Comments 11.)

identified in its opening comments would adequately protect sensitive commercial information.

A. Railroads appear to collect the necessary underlying data in the normal course of operations.

Railroads express concern that FMLM reporting would involve reporting large amounts of data that they do not ordinarily collect. For Class I railroads, this is unlikely.

Class I railroads appear to collect most, if not all, of the data underlying Joint Shippers' suggested reporting metrics. First, railroad commenters in this proceeding identify a host of data that they collect on FMLM service. Much of this data could be used to inform meaningful FMLM performance metrics. Second, to facilitate their assessment of demurrage and storage charges, railroads have developed mechanisms for collecting a significant amount of FMLM data that could be used for FMLM reporting. Third, rail labor groups confirm that the data necessary for FMLM reporting exists and is readily available to railroads.[31]

Of course, as ASLRRA suggests, some Class II and III carriers may not collect relevant data or have the resources to begin collecting and reporting it. The Board could address this by including an exemption process for these carriers or by adopting different reporting levels than would apply to Class I carriers.[32] Joint Shippers do not oppose further consideration of this issue.

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[31] (Rail Unions Comments 5.)

[32] (Shipper Ass'ns Comments 32.)

In sum, Class I railroads appear to collect the data that would be needed to provide meaningful FMLM performance reports.

B. Requiring railroads to provide basic performance information will not stifle competition or innovation.

Some railroad commenters suggest that FMLM reporting will stifle competition and innovation regarding how railroads provide service information.[33] But railroads do not compete or innovate when it comes to providing FMLM performance information. And basic FMLM reporting would still leave railroads with ample opportunity to compete and innovate. Additionally, standardized service-information reporting would actually foster competition by allowing apples-to-apples comparisons of carrier performance.

For FMLM reporting to stifle railroad competition and innovation, railroads would have to compete or innovate in this area. But they do not. As explained in Part I.B, only two railroad commenters identified meaningful FMLM performance information that they provide customers. And most of this information only indirectly conveys FMLM performance. Since railroads provide meager FMLM performance information, there is effectively no competition or innovation in this area for FMLM reporting to disrupt.

Even if railroads did provide some FMLM performance information, FMLM reporting would not stifle competition or innovation. The FMLM reporting that would help shippers and the Board involves basic performance information. With

[33] (AAR Comments 11; BNSF Comments 14-15; CSXT Comments 2; NS Comments 13.)

this reporting, railroads would still have opportunities to compete and innovate in many different ways, including by providing additional information or presenting the information in unique ways, like via a system map that uses colors to show performance levels.

FMLM reporting simply does not impair healthy competition or innovation. If anything, it spurs railroads to compete and innovate so that they differentiate themselves when it comes to providing customers with meaningful FMLM information.

C. Joint Shippers' suggested approach addresses railroads' confidentiality concerns.

AAR expressed concern that FMLM reporting will reveal confidential and commercially sensitive information.[34] While Joint Shippers have similar concerns, they have suggested a two-tier reporting structure that adequately maintains confidentiality of sensitive information.[35] Under this two-tier approach, only aggregated data would be publicly available; data about performance at specific rail-customer locations would be available only to the relevant customer. This approach keeps sensitive information related to each customer's traffic confidential

[34] (AAR Comments 12-13.)

[35] (Joint Shippers Comments 31-32.) American Petroleum Institute, the Industrial Minerals Association, the Institute of Scrap Recycling Industries, the National Grain and Feed Association, the Private Railcar Food and Beverage Association, and Shipper Associations also suggest multi-tier reporting that would protect sensitive information. (API Comments 7-8; IMA Comments 21; ISRI Comments 8; NGFA Comments 11; PRBFA Comments 26; Shipper Ass'ns Comments 24-25.)

to that customer. Also, it is consistent with AAR's suggestion that the Board could use aggregation to protect sensitive information.[36]

While railroads suggest that aggregated performance information provides little value, the Board could aggregate data at levels that adequately protect sensitive information while still providing useful insight into FMLM performance. For example, Joint Shippers have suggested aggregation by railroads' geographic service divisions or subdivisions. Information reported at this level would cover multiple local operations involving multiple rail customers and, thus, is unlikely to reveal sensitive information about any particular customer.

III. Shipper and government comments are generally aligned on reporting principles embraced by Joint Shippers' suggested reporting.

Comments submitted by shippers and government agencies indicate general alignment on principles for FMLM reporting. This indicates that FMLM reporting can be useful to a broad cross-section of rail customers. Examples of alignment include:

- Joint Shippers, the Private Railcar Food and Beverage Association (PRFBA), Shipper Associations, and the U.S. Department of Agriculture (USDA) suggest that FMLM reporting should focus on identifying how railroads are performing to the FMLM service levels they communicate to their customers.[37] Joint Shippers' recommended reporting embraces this by

[36] (AAR Comments 13-14.)

[37] (Joint Shippers Comments 25, 34-35; PRFBA Comments 26; Shipper Ass'ns Comments 22; USDA 2.)

measuring performance to trip plans, serving-day schedule, and timely orders and releases.[38]

- The Industrial Minerals Association (IMA), Institute of Scrap Recycling Industries (ISRI), Joint Shippers, National Association of Chemical Distributors (NACD), National Grain and Feed Association (NGFA), National Industrial Transportation League (NITL), PRFBA, and Shipper Associations suggest that FMLM reporting include trip plan compliance.[39] Joint Shippers' recommended reporting covers trip plan performance by including an Overall Transit Performance category of metrics that would measure performance to original estimated time of arrival.[40]
- The American Petroleum Institute (API), Joint Shippers, NACD, NGFA, and the U.S. Department of Transportation and Federal Railroad Administration (DOT) recommend that FMLM reporting includes metrics on car dwell time.[41] While DOT's and NGFA's recommended dwell metrics measure multiple aspects of dwell, Joint Shippers' recommended metrics measure only total dwell by first mile and last mile. Joint Shippers are not opposed to adopting

[38] (Joint Shippers Comments 5-6.)

[39] (IMA Comments 21; Joint Shippers Comments 19-23; ISRI Comments 9; NACD Comments 6; NGFA Comments 10-11; NITL Comments 5-6; PRFBA Comments 26; Shipper Ass'ns Comments 22.)

[40] (Joint Shippers Comments 19-24.)

[41] (API Comments 7; DOT Comments 3; Joint Shippers Comments 26-28; NACD Comments 6-7; NGFA Comments 10.)

the additional dwell metrics that DOT and NGFA recommend, as explained in Joint Shippers' opening comments.[42]

- ISRI, Joint Shippers, NACD, and PRFBA recommend that FMLM reporting indicate the number of missed switches.[43] Joint Shippers' recommended reporting addresses performance to railroad switch schedule through its Serving-Day Performance metric. [44]
- ISRI, the International Liquid Terminals Association (ILTA), Joint Shippers, NACD, and NGFA recommend that FMLM reporting indicate the number of switches that were not properly fulfilled.[45] Joint Shippers' recommended reporting provides Switch-Delivery Percentage and Switch-Origination Percentage metrics that convey this information. While PRFBA suggests reporting this through a broad missed switch metric,[46] separate metrics would help to convey situations where a switch was provided but did not perform all expected operations. Joint Shippers believe that PRFBA would not object to Joint Shippers' proposed reporting of switch fulfillment and

[42] (Joint Shippers Comment 27-28.) Because DOT's metrics only contemplate railroad-owned cars, they would need to be expanded to cover private cars.

[43] (ISRI Comments 8; Joint Shippers Comments 25-26; NACD Comments 6; PRFBA Comments 26.)

[44] (Joint Shippers Comments 25-26.)

[45] (ILTA Comments 6; ISRI Comments 9; Joint Shippers Comments 29; NACD Comments 7; NGFA Comments 11.)

[46] (PRFBA Comments 26.)

missed switches because it would provide PRFBA's members with important additional insight about switch performance.

- Joint Shippers, Shipper Associations, and USDA emphasize that reporting should indicate service variability.[47] Joint Shippers' recommended reporting reflects this principle by including a metric for trip-plan variance (i.e., On-Time Placement Variation).[48]
- Joint Shippers and NGFA suggest that reporting should differentiate between manifest and unit-train traffic.[49]
- NACD, PRFBA, and Shipper Associations indicate that railroads should convey service targets.[50] USDA appears to suggest a metric conveying service frequency.[51] Joint Shippers do not oppose a service-frequency metric, but have suggested that a requirement to disclose certain key service targets, like serving days and original planned arrival times, would be adequate.
- Joint Shippers, Shipper Associations, and railroad commenters suggest that any data aggregation should include a meaningful geographic breakdown of FMLM performance.[52]

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[47] (Joint Shippers Comments 21-23; Shipper Ass'ns 23; USDA Comments 6.)

[48] (Joint Shippers Comments 21.)

[49] (Joint Shippers Comments 33; NGFA Comments 9-10.)

[50] (NACD Comments 6; PRFBA Comments 26; Shipper Ass'ns 25.)

[51] (USDA Comments 6.)

[52] (AAR Comments 6-7 (noting that aggregation is problematic if it does not account for regional issues); CN Comments 13 (indicating that a proper aggregation would be regional instead of railroad-wide); Joint Shippers Comments 32; Shipper Ass'ns Comments 23.)

- API, IMA, ISRI, Joint Shippers, NGFA, PRBFA, and Shipper Associations suggest that the FMLM data be reported on a multi-tier basis under which aggregated data would be made public and localized data would be made available to relevant customers.[53] Joint Shippers' recommended reporting requirements include multi-tier reporting.[54]

This alignment on FMLM reporting principles indicates that FMLM reporting should convey the three categories of information that Joint Shippers identified in their opening comments: (1) overall transit performance; (2) FMLM operational performance, which covers dwell and serving-day performance; and (3) service-fulfillment information, which indicates whether switches are actually performing expected operations. Given this general alignment on reporting principles and that Joint Shippers' recommended reporting embraces these principles, the Board is well positioned with a starting framework for developing FMLM reporting requirements.

IV. Conclusion.

FMLM reporting would convey critical information about rail service to rail customers and the Board without posing a substantial burden on railroads. Additionally, shippers and government commenters are generally aligned on a workable reporting framework. For these reasons and those identified in Joint

[53] (API Comments 7-8; IMA Comments 21; ISRI Comments 8; NGFA Comments 11; PRBFA Comments 26; Shipper Ass'ns Comments 24-25.)

[54] (Joint Shippers Comments 31-32.)

Shippers' opening comments, Joint Shippers respectfully request that the Board adopt FMLM reporting.

Respectfully submitted,

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