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BEFORE THE

SURFACE TRANSPORTATION BOARD

EX PARTE No. 770

HEARING ON URGENT ISSUES IN FREIGHT RAIL SERVICE

TESTIMONY OF

AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS

I. Introduction

Chairman Oberman, Vice Chair Schultz, Members Primus, Fuchs, and Hedlund, thank you for providing this opportunity to testify before you today. My name is Rob Benedict, and I am the Vice President of Petrochemicals and Midstream at the American Fuel & Petrochemical Manufacturers ("AFPM"). AFPM is the leading trade association representing the makers of the fuels that keep us moving, and the petrochemicals that are the essential building blocks for modern life.

Refineries and petrochemical manufacturers across the country rely on a healthy rail network as a vital part of their supply chains. Annually in the United States, over 2 million carloads of our members' feedstocks and products, including crude oil, natural gas liquids, refined products, plastics, and synthetic resins, are transported by rail.[1] In fact, on average 205 million barrels of crude oil, the main feedstock our members rely upon, are moved annually on railroads.[2] An efficient transportation system also impacts consumers as transportation costs account for an important portion of the overall price a consumer pays for gasoline or petrochemical-based products.

In today's testimony, I will describe some of the rail service disruptions the refining and petrochemical industries are experiencing and I will provide some potential options to resolve these issues both in the near and long term.

II. Current Service Issues and Impacts of Disruptions

When Precision Scheduled Railroading ("PSR") was first introduced in the United States in 2017, I clearly remember discussions I had with our membership on the potential benefits and pitfalls of the operating model. At the time, there was some optimism, but mostly fears and concerns of how significant cuts in railroad operations and staffing would impact rail service, especially when faced with adverse situations. Unfortunately, our members' worst fears have become the current reality. PSR has become ubiquitous in our already competition-constrained rail network, and we are faced with compounding adversity.

While Covid-19 plays a part in the global supply chain crisis it is only part of the reason the freight rail industry is experiencing widespread service disruptions. The spread of the PSR operating model across the major American railroads is a key contributing factor to the current

[1] *See* "Freight Rail Facts and Figures" updated February 2022, https://www.aar.org/facts-figures
[2] *See* U.S. Energy Information Administration "Movements of Crude Oil and Selected Products by Rail" accessed April 20, 2022, https://www.eia.gov/dnav/pet/pet_move_railNA_a_EPC0_RAIL_mbbl_a.htm

service issues we are facing.[3] As you are aware PSR has driven operating ratios to levels once thought impossible. To achieve these sub-sixty percent operating ratios, Class I railroads have slashed their workforce, shuttered facilities, shelved equipment, and reduced service. It comes as no surprise that this has benefited investors but harmed rail shippers and ultimately consumers.

All these service changes have been dictated to rail customers with short notice, sometimes just days, and with no negotiation. This take-it-or-leave-it mentality is not new for captive shippers served by a single railroad; however, PSR seems to embolden railroads' strong-arm tactics. AFPM members have experienced increased rates, reductions in service days, the closure of hump yards, storage, and maintenance facilities vital to our operations, an increase in missed switches, and many other detrimental service issues. Our members have gone as far as making critical capital investment decisions based on where they can secure competitive rail service. Poor service has also forced some AFPM members to buy or lease additional railcars to support the same level of business.

Just days after the announcement of this hearing, AFPM members received communications from some of the Class I railroads detailing their efforts to address service issues. While the Class I railroads are now acknowledging service disruptions, they are pointing to increased traffic on the network as a reason for the issues. And while short-term demand has increased, it is not as if these are unprecedented carloads that the rail network can't handle. Rather, the Class I railroad's PSR-induced cost cutting has left the railroads unable to handle a return to normal, pre-pandemic carloads.

The most troubling aspect of the recent communications from some Class I railroads to their customers is their demand that rail shippers reduce the number of private rail cars on their network or face embargoes. Rail shippers were given just four days to reduce their rail car count in some instances by up to twenty to forty percent. In short, the Class I railroads' solution to self-inflicted service disruptions is to ask rail shippers to further reduce service which is at odds

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[3] A U.S. Department of Transportation report on the supply chain recognized the negative impact PSR has on railroad resiliency and the ability to respond to supply and demand fluctuations. *See* "E.O. 14017: Freight and Logistics Assessment" published March 4, 2022, https://www.transportation.gov/supplychains/EO14017/fullreport

with railroads' common carrier obligations. The refining and petrochemical industries are clearly impacted. AFPM member companies have been forced to reduce facility throughput and subsequently inform their downstream customers that shipments may be delayed. We believe these forced reductions in car counts are a violation of the railroad's common carrier obligation and at odds with contractual commitments made between our members and the railroads. Rail shippers are being asked to sacrifice more and bail out railroads for operation issues created by the railroads' overly aggressive business practice of PSR.

Make no mistake, this will impact the consumer. Transportation and distribution costs account for approximately 11 percent of the price a consumer pays for a gallon of gasoline.[4] And while I use a gallon of gasoline as an illustrative example, this isn't just about gasoline. Our members make renewable fuels, jet fuel, diesel, as well as petrochemicals that are essential elements of numerous daily products and that are critical to a myriad of industrial supply chains. To complicate matters, approximately 75% of refiners and petrochemical manufacturers are only served by a single railroad, with no other feasible transportation options that can efficiently move large volumes of feedstocks and products.[5] Being a "captive" shipper amplifies the negative impacts of service disruptions, like those our members are currently experiencing. To this end, service disruptions that elevate transportation costs not only impact our members but consumers.

III. A Path Forward

I understand this hearing is not an airing of grievances but rather a search for solutions, so allow me to provide some of AFPM's suggestions. Most importantly, asking rail shippers to further reduce service is not feasible and will negatively impact the price of consumer goods. Such a tactic would only be a short-term fix, as once embargos are lifted, shippers will return to normal car levels on the rail network because truck capacity is limited and there are no other viable options. This would do nothing to address the root cause of this issue, the drastic cuts to railroads' staffing and reductions in overhead and equipment.

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[4] *See* "What drives prices at the pump" published March 8, 2022, https://www.afpm.org/newsroom/blog/what-drives-prices-pump

[5] *See* Rail Customer Coalition, https://www.freightrailreform.com/wp-content/uploads/2015/02/Why-Rail-Presentation-32415.pdf

There are more creative solutions that could be taken to alleviate congestion. First, reintroducing idled equipment is essential. AFPM members are encouraged by the railroads' efforts reintroduce mothballed equipment into the system. But this reboot must go beyond just locomotives and include idled infrastructure such as hump and service yards. AFPM members are also encouraged by the rail carriers' efforts to increase staff, but this also will take time. We encourage the STB to continue to monitor staffing levels and work with the Class I carriers to determine minimum staffing levels. These changes may run counter to the railroads' desired reduction in operating ratios, but AFPM members believe these recent service disruptions have proven that the PSR cuts have run too deep and stand at odds with railroads' common carrier obligation.

Most importantly, STB's efforts to finalize EP 767, EP 768 and EP 711 could provide longer term protections from service disruptions.[6] Specifically, more transparent data, particularly in the first and last mile, could go a long way to identifying service issues early, and mitigating the impacts of those issues before they reach untenable levels. STB should move forward with a proposal to collect additional service data on the first and final miles of transit.

While rail shippers are currently being held accountable for the inefficient use of railroad-owned assets under demurrage rules, this same accountability is not required for railroads' use of privately-owned railcars. Given the current state of car-ownership, this is outdated and unfair. STB should impose greater accountability on railroads for service failures by adopting rules under EP 768 holding railroads responsible for inefficient use of private cars.

Lastly, reciprocal switching could also help to resolve some of the disruptions by reintroducing some competition into the rail network. The proposed rules will make the rail network more efficient by allowing captive shippers within a reasonable distance of a competing

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[6] *See* Docket No. 767 "First-Mile/Last-Mile Service" published September 8, 2021, https://www.federalregister.gov/documents/2021/09/08/2021-19362/first-milelast-mile-service Docket No. EP 768 "Petition for Rulemaking To Adopt Rules Governing Private Railcar Use by Railroads" published November 29, 2021, https://www.federalregister.gov/documents/2021/11/29/2021-25916/petition-for-rulemaking-to-adopt-rules-governing-private-railcar-use-by-railroads and Docket No. 711 "Reciprocal Switching" published January 3, 2022, https://www.federalregister.gov/documents/2022/01/03/2021-28396/reciprocal-switching

railroad to obtain better routes or better service. With well-thought-out reciprocal provisions in place, railroads would be faced with a simple decision, provide better service to rail shippers or risk losing business to a competitor. There never has been a time since the passage of Staggers Act that this remedy has been more needed. AFPM strongly urges the STB to finalize the reciprocal switching proposal it is currently considering.

AFPM believes in free market solutions, but the free market does not work when there is no competition, or even a realistic threat of competition. Consolidation in the railroad industry has created a system of regional duopolies and the railroads understandable desire to maximize profits has come into conflict with railroads' common carrier obligations. The Staggers Act was not intended to make the railroads attractive investment targets on Wall Street; rather it was designed to "meet the demands of interstate commerce and the national defense."[7] PSR has interfered with those goals. In closing, a healthy, efficient rail system benefits all parties, and I would stress our testimony is meant to improve the rail network for everyone, and especially for consumers. Thank you for your time and attention on this very important issue.

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[7] *See* Summary: S.1946 "The Staggers Act of 1980" - 96th Congress (1979-1980) https://www.congress.gov/bill/96th-congress/senate-bill/1946