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**BEFORE THE**
**SURFACE TRANSPORTATION BOARD**

**STB Ex Parte No. 706**

**REPORTING REQUIREMENTS FOR POSITIVE TRAIN CONTROL EXPENSES AND INVESTMENTS**

# PETITION OF THE ASSOCIATION OF AMERICAN RAILROADS TO REOPEN EP 706 AND TERMINATE SUPPLEMENTAL REPORTING REQUIREMENTS FOR POSITIVE TRAIN CONTROL EXPENSES AND INVESTMENTS

Pursuant to 49 U.S.C. § 1322(c) and 49 C.F.R. § 1115.4, the Association of American Railroads ("AAR") respectfully seeks the reopening of EP 706 and termination of the mandatory supplemental reporting requirements for Positive Train Control ("PTC") expenses and investments. The reporting requirements were originally requested by the railroads more than a decade ago, in order to capture PTC-related capital and operating expenditures, which were anticipated to be particularly high during the installation stage. Mandated by Congress in 2008, the installation of PTC is long since complete, and there is limited utility in the continued reporting of PTC expenses. Indeed, such reporting is both time-consuming and expensive. As such, AAR and its member railroads seek the termination of the supplemental PTC reporting requirement.

## BACKGROUND

In 2008, Congress mandated the installation of PTC on certain track by December 31, 2015.[1] On October 13, 2011, in response to a petition for rulemaking filed by Union Pacific Railroad Company, the Surface Transportation Board ("Board") opened a rulemaking to explore whether it should require Class I railroads to annually report how much each was spending on the development, installation, and maintenance of PTC.[2] The rulemaking proposed that carriers file certain supplemental PTC schedules alongside their Annual Report of Finances and Operations, known as the R-1, which contains information about their finances and operating statistics.[3]

AAR filed comments in support of the proposed rule, noting that "a major portion of the overall cost of PTC will be spent over the next several years as railroads develop and install PTC technologies on their lines."[4] AAR also requested that the Board "provide for review of these reporting requirements one year after that implementation date for PTC."[5]

On August 13, 2013, the Board adopted its final rule, requiring rail carriers that submit a PTC Supplement, alongside its annual R-1 reports, to separately report their capital and operating expenditures for PTC, such that they could be viewed "both as components of, as

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[1] See Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, Div. A, title I, § 104 (Oct. 16, 2008) 122 Stat. 4848, 4856 ("RSIA"). In 2015, the installation date for PTC was subsequently extended. See Positive Train Control Enforcement and Implementation Act of 2015, Pub. L. 114–73, title I, § 1302(b), (c) (Oct. 29, 2015), 129 Stat. 576, 582 ("PTCEIA").

[2] See Reporting Requirements for Positive Train Control Expenses and Investments, EP No. 706 (STB served Oct. 13, 2011).

[3] Information about the R-1 report, including the schedules discussed in this rulemaking, past R-1 reports, and a blank R-1 form, are available on the Board's website at https://www.stb.gov/reports-data/economic-data/.

[4] AAR, Reporting Requirements for Positive Train Control Expenses and Investments, EP No. 706 (STB served Dec. 12, 2011), at 7-8.

[5] Id. at 6.

well as separately from, other capital investments and expenses."[6] The PTC Supplement provided for PTC-specific versions of schedules 330 (road property and equipment improvements), 332 (depreciation base and rates—road property and equipment), 335 (accumulated depreciation), 352B (investment in railroad property), and 410 (railway operating expenses) containing dollar amounts that reflect only the amounts attributable to PTC for the filing year.[7] The PTC Supplement also contains PTC versions of schedules 700 (mileage operated at close of year), 710 (inventory of equipment), 710S (unit cost of equipment installed during the year), and 720 (track and traffic conditions).[8] In addition, the rule required railroads to "report, by footnote in each supplement schedule, PTC-related expenditures for passenger-only service not otherwise captured in the individual schedules to allow the Board to understand fully the railroads' PTC expenditures. In addition to separating capital expenses and operating expenses incurred by the railroad for PTC, the respondent entity will include by footnote disclosure the value of funds from non-government and government transfers, including grants, subsidies, and other contributions or reimbursements, used or designated to purchase or create PTC assets or to offset PTC costs."[9]

## ARGUMENT

49 U.S.C. § 1322(c) provides that "[t]he Board may, at any time on its own initiative because of material error, new evidence, or substantially changed circumstances— (1) reopen a

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[6] Reporting Requirements for Positive Train Control Expenses and Investments, EP No. 706 (STB served Aug. 14, 2013), at 1.

[7] See id. at 3.

[8] See id.

[9] Id.

proceeding; (2) grant rehearing, reargument, or reconsideration of an action of the Board; or (3) change an action of the Board." Similarly, 49 C.F.R. § 1115.4 states that, a person may file a petition to reopen any administratively final actions, accompanied by a statement detailing "the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances." Circumstances have substantially changed since the Board's PTC reporting rule was served on August 13, 2013—namely, the vast majority of costs associated with implementing PTC have been dispensed with. With these costs essentially completed, there is little utility in the continuation of the reporting requirements. As such, the Board should terminate the mandatory reporting requirements for PTC expenses and investments.

The continued separate reporting of PTC-related costs no longer serves the purpose it once did. While the separate reporting requirements captured the expenses associated with the development and implementation of PTC, Class I rail carriers have now implemented PTC on certain mainlines as required by the Rail Safety Improvement Act of 2008 ("RSIA") and the Positive Train Control Enforcement and Implementation Act of 2015 ("PTCEIA"). As such, development and implementation costs are essentially completed.

In addition, Class I railroads are incurring unnecessary costs and expending significant time to meet the current reporting requirements. Today, any PTC costs are integrated into signal and communications assets as they are purchased or replaced, and any maintenance expenses for those assets are captured as part of railroads' ongoing maintenance costs in the ordinary course of business. As a result, carving out PTC-related assets and maintenance expenses has become challenging and necessarily requires allocations and estimates.

AAR and its member railroads anticipated this change, and therefore, AAR requested that the Board provide for a mandatory reevaluation of the PTC Supplement within one year after the full implementation of PTC. While the Board declined to adopt this proposal, it noted that it could "undertake such a review any time at its discretion should experience demonstrate that it would be helpful." Experience has now shown this to be the case.

## CONCLUSION

Accordingly, the Board should reopen EP No. 706, in order to terminate the mandatory PTC Supplement reporting requirements.

Respectfully submitted,

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