Freight Rail
Customer Alliance

May 11, 2023

VIA EMAIL

The Honorable Sam Graves
Chair
House Transportation House
and Infrastructure Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Rick Larsen
Ranking Member
House Transportation
and Infrastructure Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Troy Nehls
Chair
Railroads, Pipelines, and
Hazardous Materials
House Transportation and
Infrastructure Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Donald M. Payne, Jr.
Ranking Member
Railroads, Pipelines, and
Hazardous Materials Subcommittee
House Transportation and
Infrastructure Committee
U.S. House of Representatives
Washington, DC 20515

Dear Chairs Graves and Nehls, and Ranking Members Larsen and Payne:

The Freight Rail Customer Alliance (**FRCA**) – an umbrella organization including trade associations representing more than 3,500 manufacturing, agriculture, chemical and alternative fuels companies, electric utilities, and their customers – thanks you for holding today's subcommittee hearing, "*Getting Back on Track: Exploring Rail Supply Chain Resilience and Challenges*".

In debating what steps Congress need and should take to strengthen our nation's freight rail network, FRCA asks that your Committee also address the continued and systematic freight rail service problems that shippers are still experiencing, regardless of size, geographical location, or commodity. Rail-dependent or captive shippers are especially vulnerable to these problems.

As described in further detail in the attached Utility Members' Statement presented at the meeting of the Surface Transportation Board's (STB) Rail Energy Transportation Advisory Committee held on April 26, 2023 (Appendix 1) and the 6th On Time Performance Utility Survey (Appendix 2) conducted by FRCA, National Coal Transportation Association, and National Rural Electric Cooperative Association, our nation's utilities and their ratepayers continue to suffer economic harm due to unreliable rail service delivered at unreasonable rates.

Thanks in large part to this Committee's past efforts, Congress passed the ***STB Reauthorization Act of 2015***, P.L. 114-110, which the authorization expired on September 30, 2019. FRCA recommends you build upon the basic reforms, process enhancements, and added transparency instilled in this law by:

- Clarifying the Common Carrier Obligation (CCO) statutory provision and providing the STB with both the direction and flexibility when determining if a railroad is meeting its CCO, especially in view of the industry's continued, systemic, freight rail carrier service failures.

- Allowing private rail car owners or lessors to obtain compensation from railroads for improper use or delay of their rail cars, such as when railroads are slow to deliver or pick up rail cars. The railcar ownership market has changed during the past few decades, and shippers own or lease two-thirds of the freight rail cars in use today. In addition to the costs incurred in owning or leasing the railcars, these shippers are also responsible for the repair and maintenance of these railcars.

- Prohibiting railroads from imposing increased rates during a STB-declared Emergency Service Order.

- Increasing the STB's civil penalty authority. For the current 2023, the maximum amount allowed is under $10,000 for each knowing violation, per day. With the continued profits enjoyed by the rail carriers and their shareholders, this level of penalty is clearly insufficient to deter wrongful behavior. Furthermore, the Board has used this existing authority only once in the last ten years.

- Removing commodity exemptions that were established several decades ago, based on the economic and regulatory conditions that existed at the time. Those conditions no longer exist in today's consolidated freight rail transportation marketplace. These exemptions block shippers from utilizing existing regulatory procedures available to other shippers in seeking redress or relief from the STB, including from service problems.

- Providing a five-year reauthorization for the STB, with an initial minimum annual authorization level of $48.184 million, along with annual increases commensurate with inflation, to enable the Board to fulfill its statutory responsibilities and to continue to meet the needs of stakeholders and the public.

Thank you for your consideration.

Sincerely,

Ann Warner

Ann Warner
Spokesperson
Freight Rail Customer Alliance

cc: House Transportation and Infrastructure Committee Members

About FRCA

The Freight Rail Customer Alliance (FRCA), **www.railvoices.org**, is an umbrella membership organization that includes large trade associations representing more than 3,500 electric utility, agriculture, chemical, and alternative fuel companies, and their consumers. The mission of FRCA's growing coalition of industries and associations is to obtain changes in Federal law and policy that will provide all freight shippers with reliable rail service at competitive prices.

Appendix 1

Utility Shipper Members' Statement

Surface Transportation Board
Rail Energy Transportation Advisory Board
Spring Meeting
April 26, 2023

Surface Transportation Board Offices
Washington, DC

Distinguished STB Board Members and RETAC members,

The shippers on this committee appreciate the opportunity to meet with you to voice our concerns regarding what continues to be unpredictable and unreliable railroad service for utilities, biofuels producers, energy groups and rail car owners. We wish for this statement to present the Board with the perspective of these shipper groups of the primary issues driving the rail service problems and the issues we see with the railroad reporting metrics requested by the Board.

While some market conditions have fluctuated in recent months, there are still many key service issues that more than warrant Board attention. We have prepared a detailed written appendix, but in the interest of time, we will simply identify them.

- Railroad performance should consider not only the metrics of trains and cars that do arrive, but also the requested and required volume demand that goes unmet.

- The railroads continue to employ PSR to squeeze margins from shippers and reduce costs, rather than meet shipper needs and maintain the surge capacity needed to overcome disruptions in service. The railroads also continue to suffer from a labor shortage.

- Shippers remain exposed to demurrage and other charges when things go wrong on their end, or for things beyond their control, while the carriers remain effectively unaccountable for their ongoing service problems.

- Continued lack of communication to customers from railroads

- Service metrics that are being collected from the carriers should be enhanced.

- Service metrics will not provide a complete picture when they omit first/last mile data.

- Shippers remain unable to obtain adequate information from railroads. Automated and generic chat features are no substitute for being able to speak to a knowledgeable and experienced railroad rep.

In summary, the shippers of RETAC respectfully request the railroads and the Board continue to engage in real data-driven discussions in these committee meetings. We hope that the railroads will be prepared to present data that addresses the gap between volume nominations and actual deliveries. As we have stated before, we believe this committee should focus on the relationship between forecasts and deliveries, including how forecasts compare to volumes, the accuracy of the customer's forecast, railroad feedback sent back to

the shipper, and railroads performance versus the forecast. And we look forward to the work done by the Board and this committee to address enhancement of the rail carrier and shipper forecasting communication effort.

Thank you for your engagement and concern of rail service and shipper issues.

Appendix to Shipper Summary Issues:

Communication to Customers from Railroads.
The railroads' electronic customer interfaces rely heavily on one-size fits all on-line menus that are a poor fit for shipper needs. There may be an alternative "chat" feature for shippers to submit more individualized questions, but the operators are often unfamiliar with an individual shipper's needs, or shipper needs in general. Railroads use this feature to manage or track each request or issue characterized as "cases." Too often, there are too many cases submitted that can be responded to in a reasonable time. And local railroad operating officials have verified they are not able to respond to every case. The railroads also point to the use of the case management system to deny shipper invoice claims. If you neglected to create a case for an issue, the claim may be treated with less credibility. Often the drop down menus are inadequate to cover unique situations that exist or simple requests that used to be handled via a phone call or email to an individual on the carrier's coal desk or dispatch center who knew the facility and its location and specific needs. The systems appear designed to manage shippers, not address shipper needs.

Service Metrics.
The Board should continue to request key metrics from the railroads. Shippers believe the data could be improved to match more closely what shippers are experiencing in terms of service, and not just selective metrics such as velocity and dwell time. Shippers believe that reliance on averages fails to capture variations in service. The metrics could be broken down more by region and commodity type and possibly even car type. Shippers need consistency of service for planning and reliability purposes.
Also, the metrics do not include first and last mile data, except for unit trains and intermodal movements, and such data can be critical for the overall shipper experience. It does a shipper little good if its cars move reasonably well from terminal to terminal, but then sit at the terminal before they are delivered, if local delivery switches are missed, or if a shipper needs, say, five days a week service and receives only three days of service. The overall volume of deliveries requested by shippers can be critical.

Delivery Volumes.
The reported data focuses on trains and cars that actually arrive, but largely ignores the additional volumes that shippers needed and required, but the railroads were unable to even attempt to move. Over the past couple of years, energy shippers have experienced the railroads parking train sets or cars to relieve congestion on the system. No existing reporting metric attempts to address this issue. Parking trainsets may have some helpful impact on velocity or dwell time information that gets reported, but it may also reduce the volume of ultimate deliveries, which means that shippers are not getting the volume of product that they require. There are many shippers that require regularity in deliveries and pickups, but other shippers are able to stockpile deliveries. In essence, the railroads get to grade themselves on a curve of their own choosing in terms of the trains that are running, not the additional trains that may be needed. It may be helpful to see in the metrics how many cars or trains were parked against what volumes were not shipped per commodity group. A related problem is that much of the data is reported as averages, which conceals the variation inherent in the average. As noted, shippers vary in their ability to tolerate variations. A measure such as a standard deviation would help to indicate the representatives of the average.

Precision Scheduled Railroading.
The majority of the Class 1's continue to use Precision Scheduled Railroading (PSR) to enhance railroad shareholder revenues at the expense of the customer base. The railroads have fixated on reducing railroad

operating ratios, largely by squeezing increased operating margins out of shippers, rather than to improve service, pass savings on to shippers, strengthen resiliency, or grow volumes.

Shippers and railroads worked together in the past to manage fluctuations in demand driven by forces beyond our control. However, with the advent of PSR, shippers have noted the railroads have eliminated resources to respond to surges in demand. They used to be able to gather forces and respond to variances in demand that occurred. Now, they seem to have taken all surge capacity away. Whenever there is any weather event, surge in demand, service interruption or labor issue, rail service is impacted. The carriers often point blame for lack of service on their own labor force, as if the railroads have no control over their headcounts. Shippers know from experience that rough weather did not used to have such an adverse effect on rail service. In fact, we have been told former CNW (now UP) actually used to have a sign that read, "Rough winters are no excuse." The railroads also appear to have no ability to make up deficits. Shippers may try to shift forward missed shipments or defer nominations to future periods. Often these shipments must be canceled if they cannot be delivered at all and then the entire supply chain suffers.

Accountability for Service Failures.
While shippers have continued to rack up additional costs for undelivered and delayed volumes, there appears to be no accountability for the railroads. Shippers invest millions in rail equipment and infrastructure at no cost to the railroads to enable fast and efficient deliveries and loading of commodities to and from their facilities. However, there is no standard of reciprocity between carriers and shippers when the carriers fail to provide service. Poor rail service continues to have massive cost impacts for shippers who have no means of penalizing the carrier for lack of or missed deliveries. Meanwhile, the rail carriers are able to issue demurrage and other invoices penalizing shippers based on some computer algorithm that requires time and expense for the shipper to review and dispute, and in many cases may be found unjustified.

Appendix 2

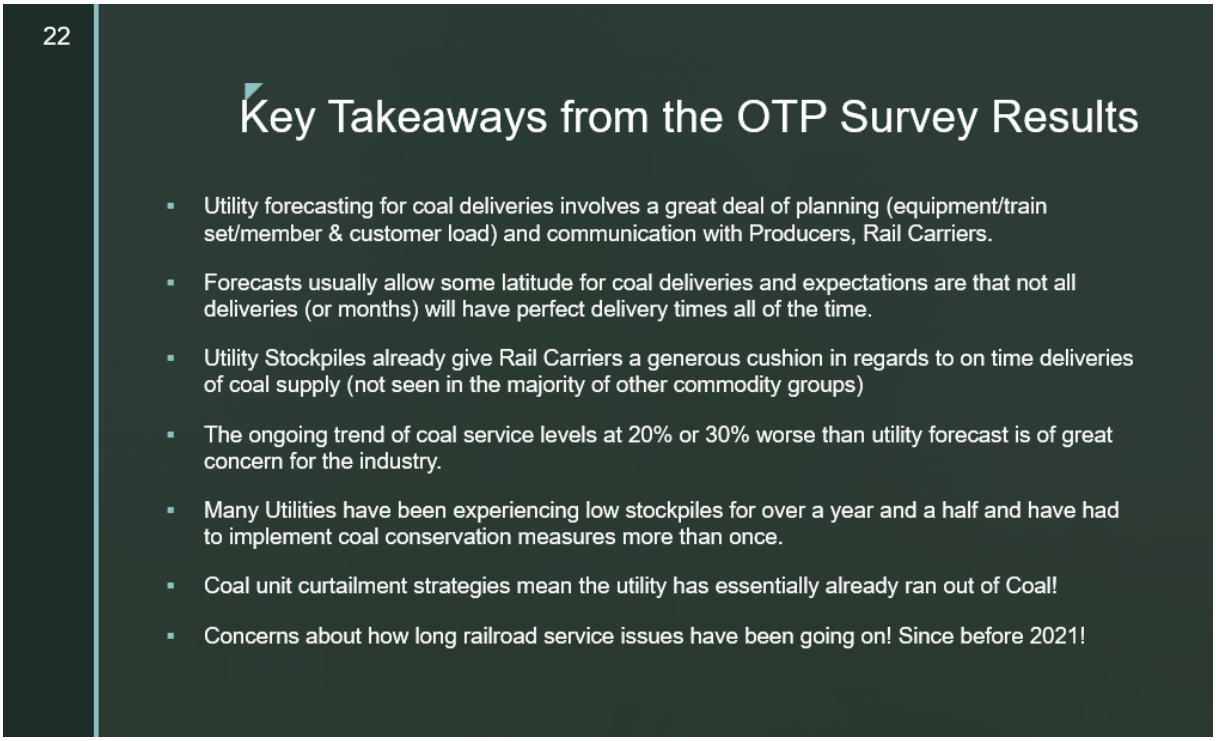
Freight Rail Customer Alliance
National Coal Transportation Association
National Rural Electric Cooperative Association

6th Utility On-Time Performance Shipper Survey

National Coal Transportation Association (NCTA), Freight Rail Customer Alliance (FRCA) and National Rural Electric Cooperative Association (NRECA) have worked together since 2019 to collect data from shipper members of their perspective of railroad performance.

The data is provided on a voluntary basis by shipper members. The identity of shippers is not disclosed but we do include the individual railroads and mine regions in the results. The data shows the different shipper experiences with their respective transit time service metrics. The data has become a useful tool in regard to logistics and planning for shippers, and has been used in comments submitted to the Surface Transportation Board and the Rail Energy Transportation Advisory Committee and Government Accountability Office.

The results from the latest survey effort from July 2022-December 2022 (and also in comparison with the first half of 2022) represents 31 plants (45 plants from the first half of 2022), 6 coal supply regions, Class 1 railroads, multi-line and shortline movements, mine to plant transit time per serving railroad and coal mines.



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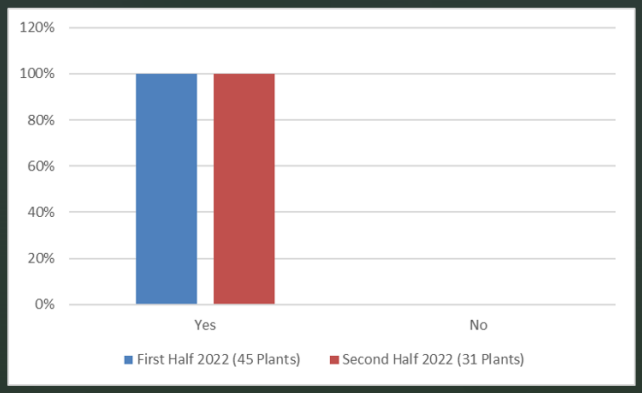
Q1: In 2022 Have Railroad Service Issues Impacted your Company's Coal Transportation?



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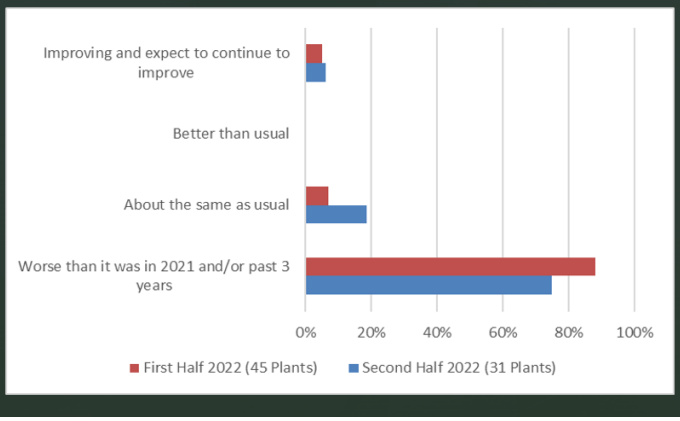
Q 2: How would you describe your railroad service in 2022?



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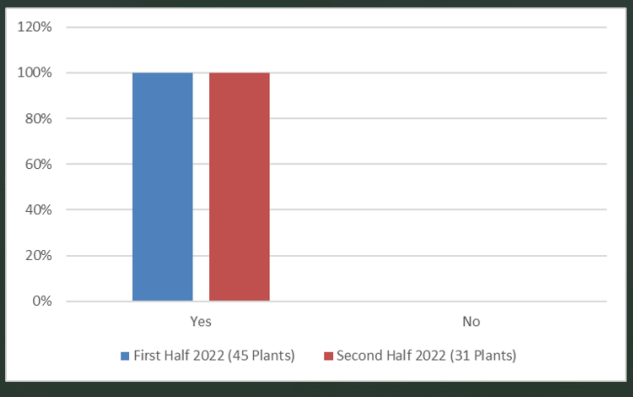
Q3: Has your company modified its operations in the year 2022 due to railroad transportation service issues, disruptions and delays?



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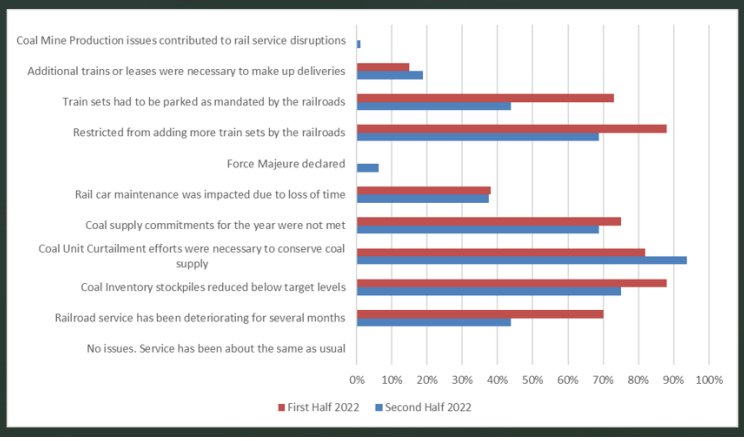
Q4: In what way have your operations been impacted by railroad service issues? Check all that apply: Year 2022 compared



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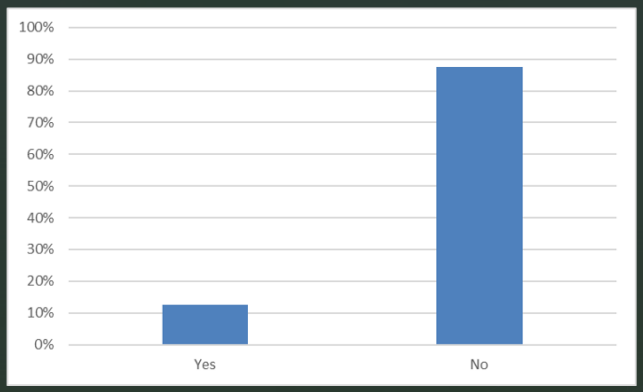
Question 5 & 6: Did coal mine production issues contribute to rail service disruptions for your facility in 2022?



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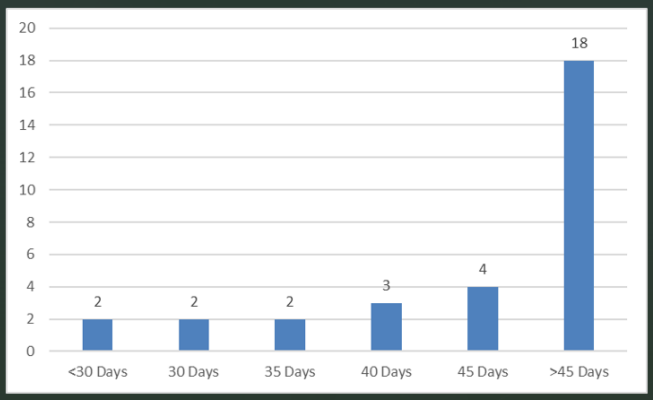
Question 7: What is your target inventory using maximum days of inventory ? 31 Plants Responded



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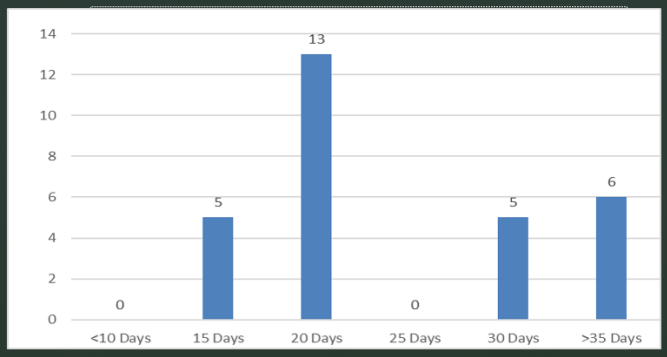
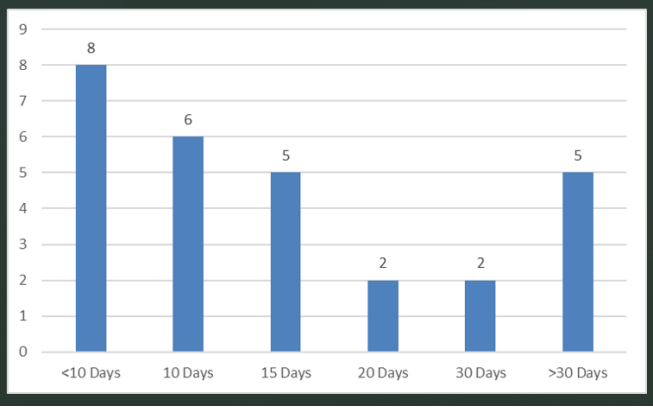
Question 8: What is your threshold inventory for implementing coal conservation using maximum days of inventory? 29 Plants responded



11

Question 9: What do you consider "Out of Coal" days of maximum burn inventory? 28 Plants Responded, 3 Declined



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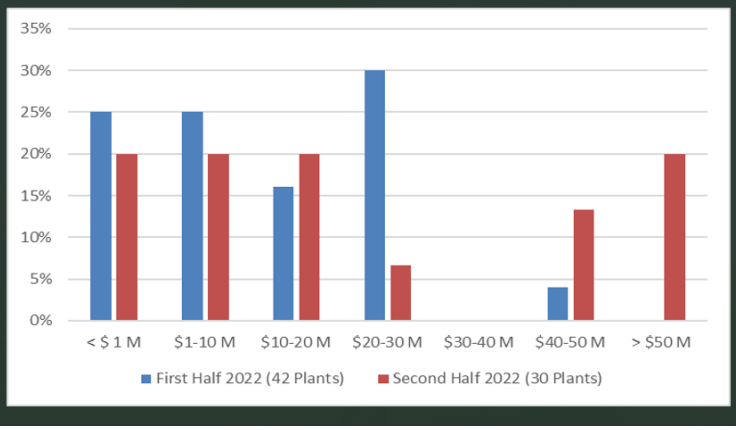
Q10 and 11: Have railroad service issues caused an increase in costs for your company? First Half 2022: Yes: 87% No: 13% Second Half 2022: Yes: 94% No: 6% $ Ballpark Estimate?



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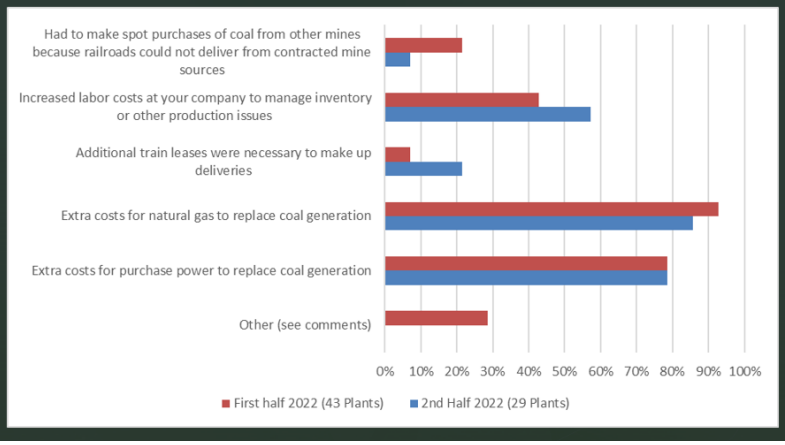
Q 12: Were increased costs incurred due to any of the following? Check all that apply?



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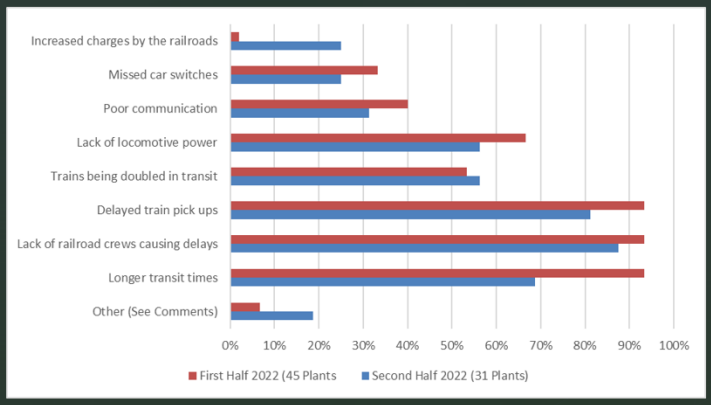
Q 13: What kind of railroad service issues have you experienced? Check all that apply



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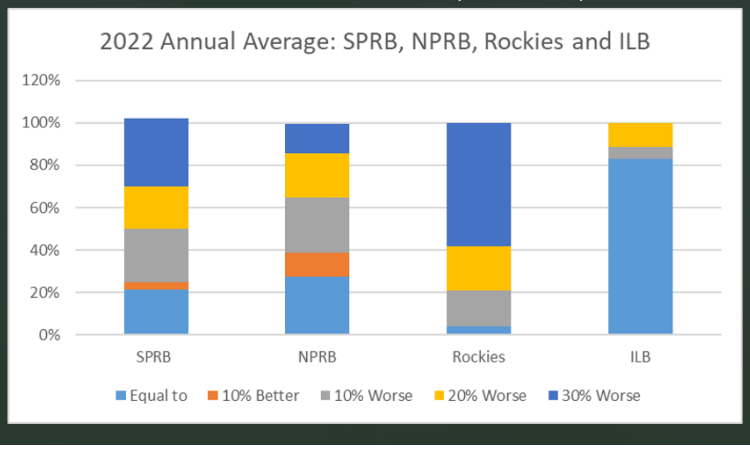
Railroad Service as Compared to Plant Forecast
First Half of 2022: 45 Plants
Second Half of 2022: 29 Plants (2 declined)



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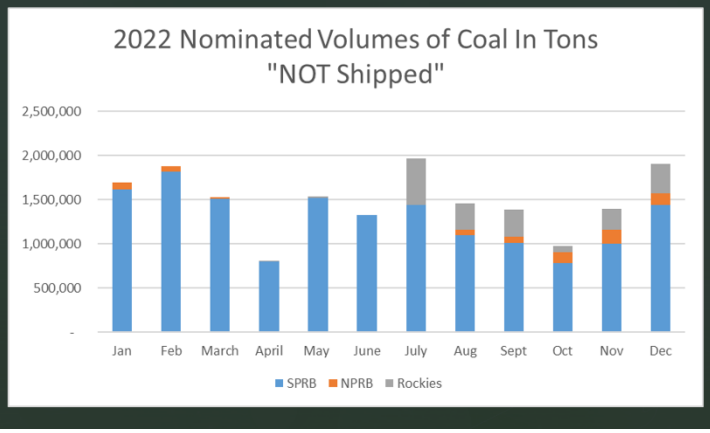
Nominated Volumes of Coal per Plant Request by Month and by Coal Region



17

Lack Of Trains Cost Wyoming $100 Million In Coal Revenue In 2022

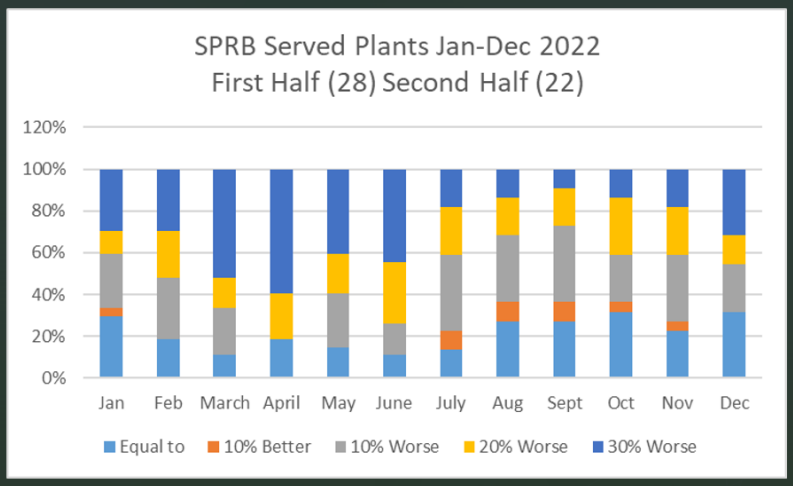
Published on January 22, 2023 — in Energy/News/coal

Cowboy State Daily

"…about 50 M tons of PRB production didn't happen due to lack of rail service…"

Wyoming coal mines produced an estimated 247 M tons in 2022…an increase of 10 M tons from 2021

18



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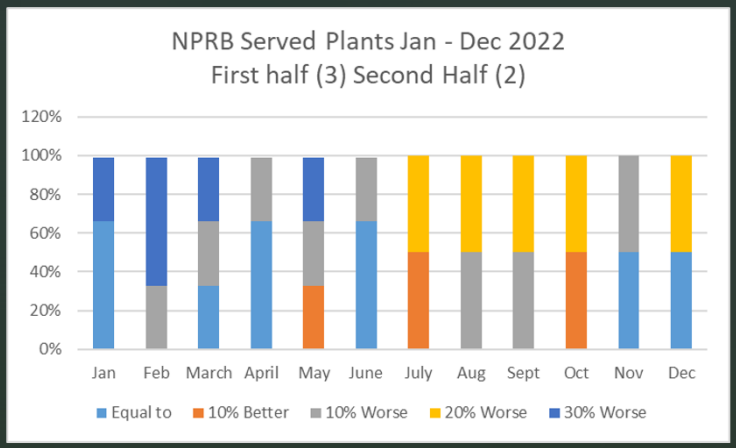

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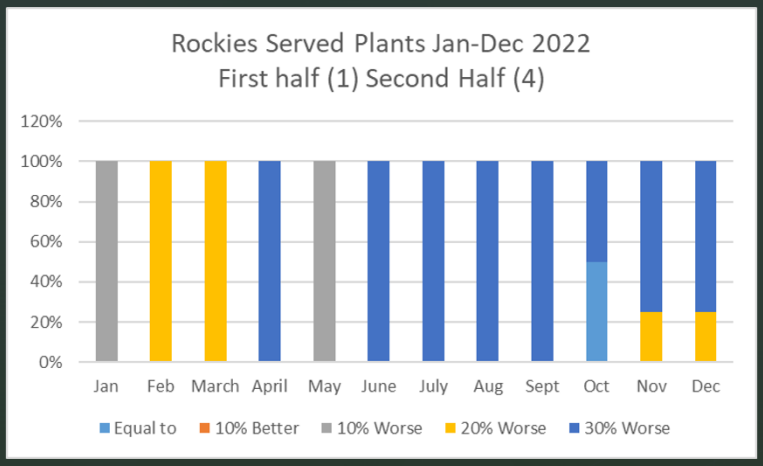
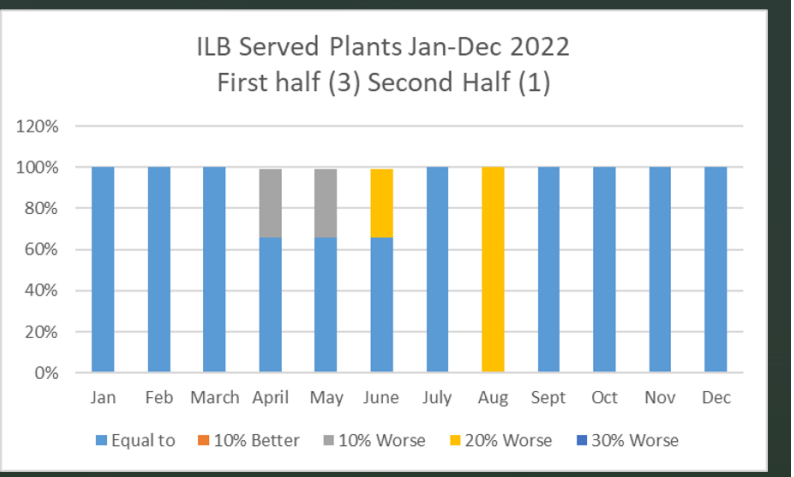

Rockies Served Plants Jan-Dec 2022
First half (1) Second Half (4)
120%
100%
80%
60%
40%
20%
0%
Jan
Feb
March
April
May
June
July
Aug
Sept
Oct
Nov
Dec
Equal to
10% Better
10% Worse
20% Worse
30% Worse

21


ILB Served Plants Jan-Dec 2022
First half (3) Second Half (1)
120%
100%
80%
60%
40%
20%
0%
Jan
Feb
March
April
May
June
July
Aug
Sept
Oct
Nov
Dec
Equal to
10% Better
10% Worse
20% Worse
30% Worse