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Office of Proceedings  
June 24, 2015  
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June 24, 2015

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423

Re: STB Docket No. EP 665 (Sub-No. 1), *Rail Transportation of Grain, Rate Regulation Review*

Dear Ms. Brown:

Pursuant to the decision served in this proceeding on June 4, 2015, attached please find the supplemental comments of the Association of American Railroads.

Respectfully submitted,

Timothy J. Strafford  
Counsel for the Association of  
American Railroads

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Ex Parte No. 665 (Sub-No. 1)

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RAIL TRANSPORTATION OF GRAIN,  
RATE REGULATION REVIEW

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SUPPLEMENTAL COMMENTS OF THE  
ASSOCIATION OF AMERICAN RAILROADS

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RAIL TRANSPORTATION OF GRAIN,  
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SUPPLEMENTAL COMMENTS OF THE  
ASSOCIATION OF AMERICAN RAILROADS

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Pursuant to the order of the Surface Transportation Board (“Board”) served on June 4, 2015 in this proceeding that held the record open for further comments until June 24, 2015, the Association of American Railroads (“AAR”) respectfully submits these supplemental comments.

The AAR and rail carriers have shown that the Board’s existing rate case procedures are currently accessible to grain shippers and that the specific proposals advanced by agricultural interests in this proceeding for substantive changes to the Board’s rate reasonableness standards are contrary to the law and sound economics. There is a fundamental difference between ensuring that process is available to all stakeholders and proposals by shipper interests that would seek unlimited rate prescriptions based on economically suspect revenue-to-variable-cost ratio comparisons and generic formulas. The Board should reject these proposals because they are not based in any kind of economic analysis, they would severely hamper railroads’ ability to reinvest in their networks, inhibit capacity growth, and degrade rail service for all

customers. Moreover, the Board should not undertake piecemeal changes to the Uniform Railroad Costing System (“URCS”) designed to advantage grain shippers. To address some of the concerns raised at the hearing regarding access by truly small shippers and agricultural producers to the Board’s processes, the Board should consider expanding its mediation program to include disputes over grain rates even if a formal complaint is not filed. Finally, the AAR submits that the report presented by the Transportation Research Board (“TRB”) at the June 10 hearing does not provide practical guidance to the Board in this proceeding.

## **Comments**

### **I. The Public Hearing Illustrated the Flaws of the Specific Grain-Specific Rate Reasonableness Methodologies Proposed in this Proceeding**

As discussed in previous rounds of written comments, the AAR does not believe that the law, sound economics, or this record support the conclusion that the Board should establish rate reasonableness rules designed to advantage grain shippers. Nothing presented at the public hearing changes that conclusion. Moreover, the specific proposals put forth by the Alliance for Rail Competition *et al.* (“ARC”) and the National Grain and Feed Association (“NGFA”) contain deep flaws that were not remediated at the hearing and those proposals should not be adopted. Both ARC and NGFA would continue to define grain too broadly and include grain products with different transportation demand characteristics and different operational characteristics from grain itself. Both NGFA and ARC continue to advocate tests based on revenue-to-variable-cost ratio (“R/VC”) comparisons unconstrained by any limits on relief. The public hearing did not provide any economic or legal justifications for the Board to reconsider its rejection of proposals

that would include traffic that moves at R/VCs less than 180% or that moves on a railroad other than the defendant. The Board should likewise reject ARC's proposal to eliminate the consideration of comparable traffic in a so-called "Two Benchmark" test that would remove any consideration of market demand from the Board's analysis.

Testimony by shipper witnesses at the public hearing confirmed that the proposals before the Board would have the effect of driving rates to the jurisdictional threshold. At the same time, it has been suggested in recent proceedings at the Board that railroads should invest more in capacity to alleviate the potential for service issues that can arise when demand increases. The railroad industry remains committed to making investments in the network designed to meet the demand for rail service now and in the future. In order to accomplish this, the revenues needed to support the necessary capacity growth should not be artificially constrained by rate reasonableness procedures that depart from sound economics. Adequate investments can only be made if anticipated returns are sufficient to justify the investments.

## **II. Any Changes to URCS Should Be Considered Holistically**

Witnesses for grain interests at the hearing continued to claim that URCS systematically overstates cost for grain shippers by failing to account for the fact that grain moves in efficient shuttle and unit trains. The reality is that URCS already accounts for such efficiencies. Indeed, Union Pacific demonstrated at the hearing that grain shipments moving in trainloads are costed at 37% less than single car movements. *See* Union Pacific Oral Hearing Exhibits (filed June 10, 2014). While the Board is considering how URCS accounts for such efficiencies in EP 431 (Sub-No. 4), it is simply

wrong to say that URCS does not account for the efficiencies of shuttle and unit-train grain operations.

As the AAR has made clear in several other proceedings, it supports Board efforts to calculate the variable costs of specific movements more accurately. *See, e.g.,* AAR Comments EP 681, *Class I Railroad Accounting and Financial Reporting – Transportation of Hazardous Materials* (filed Feb. 4, 2009). The extensive use of system-wide average costs throughout the regulatory regime, however, counsels strongly against piecemeal adjustments to URCS or favoring grain shippers over shippers of other commodities. If the effect of such an approach were to lower the URCS calculation of variable costs just for grain shipments, the costing system would not allow railroads to recover all of their costs because other traffic would be costed based on system averages that did not reflect adjustments for grain.

### **III. The Board Should Consider Expanding Mediation to Informal Complaints Regarding the Reasonableness of Grain Rates for Truly Small Shippers**

Testimony from NGFA at the hearing indicated that there may be stakeholders who believe that railroad rates may be unreasonable but for whom almost any litigation expenses may be prohibitive. For these truly small shippers and agricultural producers, no changes to the Board's rate case rules will be helpful. At the same time, the Board reiterated its concern that its process be accessible to all stakeholders and appeared interested in fostering dialogue and understanding among stakeholders involved in grain transportation. To accomplish these dual objectives, the Board should consider expanding its mediation program. While the Board already makes informal dispute resolution available through its Rail Customer and Public Assistance Program and mandatory non-binding mediation is the first step in a formal rate complaint, an expanded

confidential mediation program that was available to shippers and agricultural producers without filing a formal rate complaint could bridge a gap in the Board's process for those parties. The AAR suggests that the Board explore partnering with railroads and agricultural organizations to create an opportunity for professionals with agricultural business experience to serve as local mediation facilitators. The availability of local mediation with such professionals could limit expense for parties and make mediation more attractive.

#### **IV. The Report Presented by the TRB Does Not Provide Any Practical Insights to the Board in this Proceeding**

The TRB's Special Report 318, which had been requested by Congress in the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005, Pub. L. No. 109-59 (SAFETEA-LU), does not support any Board action with regard to grain rate cases. Although the TRB presented the results of its report at the hearing, the TRB was not charged with, nor did it consider, recommendations to create special rate reasonableness rules for grain traffic. Instead, the group of academics that made up the report committee elected to consider several broad aspects of rail regulation on a blank slate, as if there were no law or precedent in this area. Nearly all of the recommendations of the report would require legislative changes and could not be implemented by the Board absent Congressional action. As such, the report does not provide any guidance to the Board on how to proceed in this docket, as any action the Board takes in this proceeding must comply with its statutory mandates. Moreover, the findings and recommendations in the report are substantively interrelated and do not provide any opportunity for the Board to pick and choose areas to address.

## CONCLUSION

In light of the foregoing and the record in this proceeding, the Board should not adopt special rate reasonableness rules for grain. Moreover, the Board should reject the economically flawed proposals put forth by NGFA and ARC. To address some of the concerns raised at the hearing, the Board should consider expanding its mediation program for small grain shippers and agricultural producers.

Respectfully Submitted,



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