Testimony of James E. Byrum
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Before the U.S. Surface Transportation Board

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

June 10, 2015

Acting Chairman Miller and Commissioner Begeman, I am James Byrum, president of the Michigan Agri-Business Association headquartered in East Lansing, Michigan. Thank you for the opportunity to appear before you today. The Michigan Agri-Business Association (MABA) represents more than 500 grain handlers, agronomy retailers, agricultural input providers, agricultural transporters and food manufacturers. Country elevators are a critical part of Michigan's agricultural supply chain and an important segment of our membership. The commercial grain industry helps drive Michigan's growing agriculture sector. Those in the grain industry are vital partners in rural communities, and their impact has far-reaching effects on other sectors of the agricultural and rural economy overall.

I hope to build on testimony you heard earlier today from the National Grain and Feed Association, and emphasize the atmosphere of tremendous uncertainty in the countryside.

This is due to two facts:

First, pending rail rate increases are beginning to cause market shifts that could fundamentally alter U.S. and international grain markets.

Second, we see little in the way of fair or reasonable avenues of recourse for grain handlers to address this situation. I wish to share our Association's concern that the current rail rate appeal processes through the U.S. Surface Transportation Board (STB) – the Stand Alone Cost, Simplified Stand Alone Cost and Three-Benchmark methods – are too complex, too time consuming and too costly to be relevant to grain shippers, especially country elevators, and they are unlikely to be a useful recourse for our industry in this situation.

The impacts of rate increases are virtually immediate, while the current appeal processes can take months or years, even then. A resolution through this process only happens long after the effects have changed the industry.

We are concerned that the Board's three existing rate-complaint procedures simply are inappropriate and unworkable for agricultural commodities and country elevators. To challenge a rate under any of the authorities provided by the STB is costly both in terms of time and money. Those costs often outweigh the potential recovery of rate overcharges. The evidentiary burden on captive shippers, even under the simplified stand-alone cost rules, is excessive.

Commodity movements are also a "moving target" by the very nature of the business. Origin and destination pairs, freight volumes, and production trends vary, which makes contesting a rate case more difficult. Market demands also shift constantly, making it more difficult to show long-term trends that are crucial to contesting an STB rate case. In addition, commodity shippers often do not generate the tonnage necessary to meet traffic densities needed to bring a rate challenge under the Board's current procedures. This is due in part to the low-density rural areas where our members and customers are located.

Finally, the railroads make the process difficult by virtue of their "bully pulpit" in the commodity transportation markets. Railroads use their market power to impose rates across-the-board for certain commodities or groups of commodities. Because STB rules require proof of a single market actor abusing the market, this industry-wide practice makes contesting a rail rate case more difficult. Under the current three-benchmark rules, only the movements of the defendant railroad may be included in a comparison group.

With regard to the market impacts of this rate increase, MABA and our members have multiple concerns. The pending rate increases are a surprise to our sector given the significant investments many in the grain industry have made in response to requests in the past by Class I railroads. These actions could have a number of significant impacts on the U.S. grain trade. For example:

The changes will arbitrarily determine "winners and losers" in the grain market. I want to emphasize that many, if not most, major rail infrastructure investments by private companies have been predicated on what Class I railroads explicitly requested, or demanded.

Many grain handlers that now are impacted negatively by these new rates have already invested heavily to improve their own rail loading operations to handle larger unit trains and move commodities more efficiently in partnership with the railroads. These investments often have been made with the encouragement or insistence of railroads.

Earlier today, for example, the Committee heard from my past Board Chairman, Bruce Sutherland with Michigan Agricultural Commodities (MAC), that his company invested more than $35 million over the past five years on such improvements. Specifically, MAC increased storage capacity and expanded operations to ship 90-car unit trains. I can highlight other companies with a similar story, such as the Cooperative Elevator Company and Auburn Bean and Grain – now The Andersons – who have invested and are now penalized. These investments were made at the insistence of CSX. These are just a few examples among many others across Michigan, Indiana, Ohio and other states. These stories highlight how pending rate changes would undercut the value of proactive infrastructure investments by the private sector.

Markets will likely fundamentally shift for Michigan-produced commodities, and U.S. producers will be at an economic disadvantage against foreign suppliers.

Proposed rate increases likely will alter and disrupt customary "grain flows," with significant consequences on agribusinesses, farmers and customers. Currently, Michigan-produced grain moves primarily to markets in the Southeastern U.S., and these changes would signal a paradigm shift in that marketing opportunity. As a result, Michigan producers and agribusinesses likely would keep grain closer to home, sending it to local livestock or ethanol production facilities whose needs are different from those of current customers in the Southeast.

In addition, current customers would be forced to look to other markets for grain. This likely would mean an increase in imports from South America for major feeders located near ports, which would hurt Michigan and U.S. companies, producers and others in the long run.

Anecdotally, we are already hearing of some customers making preparations or even carrying out plans to import corn from Brazil and Argentina.

Short line railroads that grain producers depend on would be hurt as well. The cumulative potential of lower grain volumes moving on rail puts additional pressure on the viability of short line railroads, which rely on agricultural shipments for their livelihood. This comes at a difficult time for short line operators, who are looking for opportunities to improve deteriorating infrastructure. Lower volume could mean decreased revenue and ultimately even more deterioration of the infrastructure, if not the abandonment of some lines. This would in turn cause additional harm to grain handlers and farmers.

We are already seeing pending price increases reflected in elevator bids across Michigan, and we believe the long-term economic impact will be in the tens of millions of dollars. Given the percentage of Michigan grain moved by rail, a 10 cent increase per bushel on transportation costs would result in an annual impact on Michigan producer income of nearly $50 million annually. The increase in transportation cost will be passed down to farmers, who will ultimately be hit in the pocketbook.

As the president of a local trade association, I field calls on a daily basis from those concerned about the impact of this action by CSX. As I mentioned at the beginning of my testimony, our members face a very uncertain future.

Perhaps of the greatest concern, there is no clear or timely recourse for Michigan grain handlers under current STB practices.

Ultimately, our grain shippers and other members whose livelihoods are based on grain markets are in a difficult spot. They face the many market uncertainties I outlined for you today, but have little or no reasonable opportunity to seek relief. This is a unique issue, but it has far-reaching consequences – and I hope that together, we can find reasonable ways to work through this issue and maintain the competitiveness of Michigan's agriculture sector.

Mr. Chairman and members of the committee, once again, I appreciate the opportunity to join you today, and thank you and your staff for reviewing this situation. This remains an uncertain time for grain handlers for a wide variety of reasons I outlined for you today, and I hope that we can work together to remedy this issue.