

**Comments of the South Dakota Department of Transportation
to the
Surface Transportation Board**

Rail Transportation of Grain, Rate Regulation Review; Expanding Access to Rate Relief

Docket No. EP 665 (Sub-No. 2)

November 4, 2016

The South Dakota Department of Transportation (SDDOT) strongly agrees with the premise of the Surface Transportation Board's (Board) request for comment in this docket. As stated by the Board in issuing its Advance Notice of Proposed Rulemaking (ANPRM) in this docket,

“the existing rate review processes present accessibility challenges for not only grain shippers, but also small shippers of any commodity.... for small rate disputes, regardless of commodity, the litigation costs required to bring a case under the Board's existing rate reasonableness methodologies can quickly exceed the value of the case.”

81 Federal Register 61647-48. The Board made a nearly identical statement later on in the ANPRM. 81 Federal Register 61651.

Revision and simplification of the Board's procedures is overdue because the complexity and cost of disputing unreasonable rail rates is too expensive for smaller shippers. The costs of contesting unreasonable rates can exceed the savings to shippers if the rates are modified. The low number of cases contesting excessive rail rates is an indication of the complexity, difficulty, and cost of bringing such disputes. The Board properly noted in the ANPRM that very few cases have been brought under the current procedures intended to provide a means for prompt resolution of smaller rate cases at reasonable cost. This illustrates the unmet need for a practical and inexpensive way to review smaller rate cases. We urge the Board to act promptly to put in place revised, simplified processes for shippers to bring smaller rate dispute cases.

South Dakota rail shippers tend to be remote and inaccessible from competing rail carriers and

other transportation alternatives. As a result, those shippers are generally “captive” in a practical sense and must accept the rail rates that are offered. There may be a small number of cases where a South Dakota business could ship by truck for hundreds of miles to an alternative rail carrier. This option has high transportation costs. Only cargo with extremely high value per unit weight and volume can be produced and shipped profitably in such a costly environment. Generally, this option is not economically feasible for South Dakota shippers. Limited shipping alternatives and high transportation costs influence the sustainability of operations and the producers’ ability to stay in business.

Simple procedures to dispute rail rate reasonableness should be developed by the Board so the cost of the rate review process does not exceed the value of the case. The Board is correct to explore new techniques that will simplify rate dispute processes and greatly limit the need for costly fact-finding. To the extent possible, the Board should permit the use of readily available public data in lieu of data developed through costly processes. We note that the Board should not necessarily limit itself to determining only one new simplified rate dispute process; it could provide alternative processes and options to shippers. Development of a simplified rate dispute procedure or procedures should be done promptly consistent with considerations required by statute.

In conclusion, the Board should promptly develop a new rate review process or processes that are simpler, more affordable, and more accessible to shippers so that the cost of the process does not exceed the value of the case. The South Dakota Department of Transportation thanks the Board for the opportunity to comment and looks forward to being able to comment on an NPRM in this docket in the near future.

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