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SERVICE DATE – DECEMBER 12, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 665 (Sub-No. 1)

RAIL TRANSPORTATION OF GRAIN, RATE REGULATION REVIEW

Digest:¹ The Board invites public comment on how to ensure the Board's rate complaint procedures are accessible to grain shippers and provide effective protection against unreasonable freight rail transportation rates.

Decided: December 9, 2013

AGENCY: Surface Transportation Board.

ACTION: Request for Comments.

SUMMARY: The Surface Transportation Board invites public comment on how to ensure the Board's rate complaint procedures are accessible to grain shippers and provide effective protection against unreasonable freight rail transportation rates.

DATES: Comments are due by March 12, 2014. Replies are due by May 12, 2014.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's website, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 665 (Sub-No. 1), 395 E Street, S.W., Washington, DC 20423-0001. Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's website.

FOR FURTHER INFORMATION CONTACT: Nathaniel Bawcombe at (202) 245-0376. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

SUPPLEMENTARY INFORMATION: On November 2, 2006, the Board held a hearing in Rail Transportation of Grain, Docket No. EP 665, as a forum for interested persons to provide views and information about grain transportation markets. The hearing was prompted by concerns regarding rates and service issues related to the movement of grain raised by Members of Congress, grain producers, and other stakeholders. When it closed that proceeding in January 2008, the Board reasoned that guidelines for simplified rate procedures had recently been adopted, providing a new avenue for rate relief for grain shippers. Rail Transp. of Grain, EP 665, slip op. at 5 (STB served Jan. 14, 2008).² The Board also noted that it would continue to monitor the relationship between carriers and grain interests, and that if future regulatory action were warranted, it would open a new proceeding. Rail Transp. of Grain, EP 665, slip op. at 5.

The Board recently concluded a proceeding to reform freight rail rate regulations generally. See Rate Regulation Reforms, EP 715 (STB served July 18, 2013), appeal docketed, No. 13-1230 (D.C. Cir. July 29, 2013). In that proceeding, parties representing grain shippers' interests argued that the proposed changes did not provide meaningful relief to grain shippers.³ One party also noted that, despite increases in rates, no grain shipper has sought rate relief at the Board or the Interstate Commerce Commission since 1981, and that the Board should consider providing more substantial modifications to its rate process to provide a mechanism for grain shippers to challenge rates.⁴ On the other hand, one carrier argued that grain rates are not unreasonably high and that the Board's rate methodology has not been shown to be flawed with respect to that traffic.⁵

We believe it is appropriate to consider what regulatory changes could be implemented to ensure that the Board's rate case procedures are fully accessible to grain shippers and provide effective relief from excessive freight rail rates, as appropriate. The Board is seeking input from interested parties on grain shippers' ability to effectively seek relief for unreasonable rates, including proposals for modifying existing procedures, or new alternative rate relief methodologies, should they be necessary.

² Referring to Simplified Standards for Rail Rate Cases, EP 646 (Sub-No. 1) (STB served Sept. 5, 2007), aff'd sub nom. CSX Transp., Inc. v. STB, 568 F.3d 236 (D.C. Cir.), vacated in part on reh'g, 584 F.3d 1076 (D.C. Cir. 2009).

³ National Grain and Feed Association (NGFA) Opening 4-5, Rate Regulation Reforms, EP 715; Alliance for Rail Competition, Montana Wheat & Barley Committee, Colorado Wheat Administrative Committee, Idaho Barley Commission, Idaho Wheat Commission, Montana Farmers Union, Nebraska Wheat Board, Oklahoma Wheat Commission, South Dakota Wheat Commission, Texas Wheat Producers Board, and Washington Grain Commission Opening 6-12, Rate Regulation Reforms, EP 715.

⁴ NGFA Opening 3-4, Rate Regulation Reforms, EP 715.

⁵ BNSF Ry. Co. Reply 10, Rate Regulation Reforms, EP 715.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A proceeding is instituted. Notice of this decision will be published in the Federal Register.

2. Comments are due by March 12, 2014. Replies are due by May 12, 2014.

3. This decision is effective on the day of service.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.