



**TTMSGroup**

ANALYSIS | POLICY | SOLUTIONS

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ENTERED  
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May 27, 2015  
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Public Record

May 26, 2015

Honorable Cynthia T. Brown  
Chief, Section of Administration  
Surface Transportation Board  
395 E Street, NW  
Washington DC 20423-0001

RE: Ex Parte No. 665: Rail Transportation of Grain, Rate Regulation Review

Dear Ms. Brown:

Pursuant to the Board's notice for a Public Hearing on June 10<sup>th</sup>, 2015, TTMS Group hereby submits its Notice of Intent to participate in the above styled proceeding. I will be representing the Group and respectfully request 20 minutes for my presentation. I have also included my testimony in this E Filing of my Intent to participate.

Sincerely,

Kevin Kaufman

Managing Partner  
TTMS Group  
PO Box 92324  
Southlake, Texas 76092



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RE: Ex Parte No. 665: Rail Transportation of Grain, Rate Regulation Review

Dear Ms. Brown:

I have also included my testimony in this E Filing of my Intent to participate. Please let me know if you need any additional information.

Sincerely,

Kevin Kaufman

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PO Box 92324  
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**PUBLIC VERSION**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. EP 665 (Sub-No 1)**

**RAIL TRANSPORTATION OF GRAIN, RATE REGULATION REVIEW**

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**Public Hearing Testimony**

**10 June 2015**

**TEXAS TRADING AND TRANSPORTATION SERVICES, LLC, DBA TTMS  
GROUP**

**Lochiel Edwards  
Kevin Kaufman  
Daniel Kidd  
TTMS Group  
PO Box 92324  
Southlake, Texas 76092**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. EP 665 (Sub-No 1)  
RAIL TRANSPORTATION OF GRAIN, RATE REGULATION REVIEW**

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**Public Hearing Testimony**

**TEXAS TRADING AND TRANSPORTATION SERVICES, LLC, DBA TTMS  
GROUP**

Pursuant to the announcement by the Surface Transportation Board (“STB” or “Board”) in its decision in Docket EP 715, Rate Regulation Reform, served on July 18, 2013 (EP 715 Decision), followed by the decision served on this proceeding on December 12, 2013 (EP 665-1 Decision), the Texas Trading and Transportation Services, LLC, (“TTMS Group”) hereby submits its testimony for the hearing dated 10 June 2015 (“Testimony”).

My name is Kevin Kaufman. I am the Managing Partner for the Texas Trading and Transportation Services, LLC, d/b/a TTMS Group. TTMS Group is a limited liability Company, established in the state of Texas in 2014 whose purpose is to provide fact-based information to producer groups about (a) price risk management (trading) (b) transportation and (c) marketing. As part of our transportation portfolio, we provide oversight for railroad rate pricing, practices and service. In addition, we carefully monitor STB procedures and oversight to evaluate whether these are reasonable and appropriate and that unintended consequences do not result from otherwise good-intentioned regulation.

We thank the STB for this opportunity to testify regarding the often divisive subject of agriculture rail rates and their regulation.

It is not surprising that this subject receives zealous attention when rail service is below standard and/or when commodity prices are low. We understand the link between shipper angst and poor service: the shippers bear the costs and the railroads experience little economic consequence. However, we do not understand the relationship between increased regulation of rail rates and resolution of poor service. Will regulating rail rates improve rail service? Absolutely not. There is a clear and irrefutable inverse economic relationship between rate regulation and service. We believe this was graphically illustrated in Canada over the last couple years, and we believe the STB (and the ICC before them) also see the inherent service dangers in rate regulation. So what is the issue here? Is the shipper community being double-minded? Punish the railroads with rate regulation until service improves? (Reminds you of the oft repeated, "...beatings will continue until morale improves.....")

As we have previously testified, if the issue is service, then let's have a discussion about resolving service issues. But if it is about agriculture transportation rates, then what is the real concern? As I have often asked, "if you do not like the rates, then you tell me what you think the rates should be....." And the answer I receive is that we want railroads to make money....but.....not too much money.....! Not much clarity! And, of course, the existing solution is a set of incomprehensible regulations around suspect revenue/variable cost ratios and a complex judicial review process. No wonder it has seldom been used!

However, while the need for some sort of rate (and I might add service) judicial review process is clear, the consequence of getting it wrong for agriculture would be catastrophic. US agriculture is a complex and dynamic market-based industry that requires a transparent market-based rail transportation system to be productive and efficient. And, because of that fact,

we do not think that even an agriculture-specific government regulatory system will ever effectively respond to the needs of the industry and its transportation providers. While we agree that the current system is flawed, we do not believe that many of the proposed changes to the current system would necessarily improve anything and would likely make things worse. Therefore, we advocate a private-sector administered rail arbitration system that mirrors the already proven NGFA arbitration system, *and its existing rail arbitration!* Its very success, within the complicated paradigm that is agriculture, proves that it is not necessary, and certainly less effective, to create a market-distorting alternative solution from a regulatory agency that lacks the necessary US grain business expertise.

NGFA has more than one hundred years of successful experience with alternative dispute resolution (“ADR”). In fact, the NGFA arbitration process is cited frequently as the model for successful application of the principles of ADR. Their process is administered by its members and is based upon a clear set of rules that have been agreed to by their membership. Further, as a condition for membership, each member must agree to be bound by the process.

The success of the US grain industry is based upon having a transparent and market-based trading paradigm that allows price-discovery to operate efficiently. Part of the success of this process is the fact that there is also an imbedded, underlying market-based transportation system that allows the grain industry to make commitments knowing their underlying costs and timing for receipt and delivery. It is the envy of the world. However, for the process to function efficiently, Adam Smith’s “invisible hand” must be allowed—with its myriad of dependent and independent variables—to operate efficiently upon a known playing field without structured bias for its participants. And this is why regulation is so difficult for agriculture: Even well-meaning regulation changes the playing field and automatically creates winners and losers. This complexity requires that a regulator actually has the experience to understand the nature of the business and act appropriately. Thus, a successful judicial review process requires (a) a process with extreme flexibility and ability to make decisions on a micro-basis (b) judges who understand the complexity of the industry (c) judges that have the confidence of the participants and (d) sufficient resources to permit the process to operate expeditiously.

NGFA has successfully incorporated all of the necessary elements to successfully adjudicate complex grain industry disputes. Why could that same NGFA process not be used to solve the current agriculture railroad judicial review and oversight problem existing today? NGFA currently has a rail dispute arbitration process! It has been limited for years to only resolve disputes about what a rule says and not about the rule itself. Further, most its railroad members have refused to expand its jurisdiction to include rates. But that does not mean that the process is flawed. That only means that some of its railroad members would rather submit to existing one-size-fits-all STB judicial review process than submit to a peer review process within an NGFA arbitration process. Railroad reluctance is not evidence that ADR would not be superior, but only an indication that Class 1 railroads are more comfortable with the traditional and known quantity of extensive legal filings and legal ritual. Obviously, this regulatory avenue is unworkable for ag shippers, with only one major rate filing (unsuccessful) in the last several decades.

The fact is that the NGFA ADR process is (a) generally accepted to be efficient, reasonable, fair and appropriate by both the agriculture and railroad industries when applied to ag trade issues, (b) legally tested and validated, and (c) replicable. Therefore, given the fact that (a) such a proven paradigm exists and is available and (b) an STB or government administered process would be less attractive, we strongly advocate that the NGFA rail arbitration process be reviewed and proposals submitted to make it mandatory and viable for general agriculture rail rate *and* service oversight.

We can further attest to the success of NGFA-like ADR by referring you to the existing and successful Montana Producer-BNSF Railway ADR Agreement which was largely developed around the existing NGFA arbitration model. Under the oversight of Montana Grain Growers Association and Montana Farm Bureau, it allows farmers to file rate complaints against the BNSF Railway and uses paid industry respected transportation and agriculture experts to arbitrate the complaint if mandatory mediation first fails to resolve the dispute. To date, there have been several complaints each resolved through mediation before the formal arbitration process was necessary. This is a huge success especially when you consider that Montana is one of the few geographic areas where the transportation captivity argument is actually valid. Not only has the process proved to be reliable and efficient, but it has also proved to be very cost effective!

Thus, given a proven success record for ADR through arbitration, we do not understand why a solution cannot be crafted around an existent private sector rate arbitration process. Further, it should be pointed out that shortly after the implementation of the ICC Termination Act, its incorporated Rail Shipper Transportation Advisory Council submitted to the STB a viable arbitration process that was subsequently rendered dysfunctional with ill-considered administrative changes and thus never used. Why cannot this existing process be resurrected and reconsidered?

In our opinion, one-size-fits-all government administered rate regulation will not only fail to provide appropriate judicial review but, for agriculture, will likely yield significant unintended consequences for the agriculture industry including the loss of its existing global competitive advantage. Instead, let's spend the time to examine and use the already existing proven ADR processes.

To be very clear, you will hear many points of view on this topic, many of them seeking an opportunity to either gain market advantage or to simply perpetuate the debate for their own interests. The interests of TTMS Group are this- we seek, for the benefit of the American grain producers, a freely functioning market for their products, unfettered by artificial distortion of price, supply, and demand. Rail rates are certainly a part of that market-discovery dynamic, and when intervention is necessary, should be exerted by those who have expertise in those very same markets.

Thank you for this opportunity to share our testimony.