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Transportation & Marketing Consultants

May 29, 2015

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

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May 29, 2015
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Public Record

Re: Notice of Intent of ARC, et al. to Participate in Hearing in EP 665 (Sub-No. 1), Rail Transportation of Grain, Rate Reasonableness Review

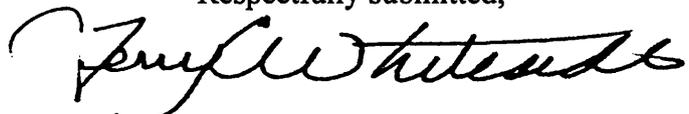
Dear Ms. Brown:

In accordance with the Board's decision served May 8, 2015 in this proceeding, the Board is hereby notified of the intent of the Montana Wheat and Barley Committee, Alliance for Rail Competition (ARC), Colorado Wheat Administrative Committee, Idaho Barley Commission, Idaho Grain Producers Association, Idaho Wheat Commission, Minnesota Corn Growers Association, Minnesota Farmers Union, Montana Farmers Union, Nebraska Corn Growers Association, Nebraska Wheat Board, North Dakota Corn Growers Association, North Dakota Farmers Union, Oklahoma Wheat Commission, Oregon Wheat Commission, South Dakota Corn Growers Association, South Dakota Farmers Union, South Dakota Wheat Commission, Texas Wheat Producer Board, Washington Grain Commission, Wisconsin Farmers Union, Wyoming Wheat Marketing Commission and U.S. Dry Pea & Lentil Council, National Corn Growers Association (NCGA) Alliance for Rail Competition and the other agricultural shipper and producer interests whose names appear on these parties' joint filings in this proceeding (hereafter "ARC, et al.") to participate in the oral hearing scheduled for June 10, 2015. We request that representatives of ARC, et al. be provided 35 minutes for their presentation, to be divided generally as follows:

5 minutes – Terry Whiteside
15 minutes – G.W. Fauth, III
15 minutes – John M. Cutler, Jr.

We further request that ARC et al. be provided 5 minutes for rebuttal presentation. Attached is a summary of key points to be made at the hearing on behalf of ARC, et al.

Respectfully submitted,



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ARC, ET AL. SUMMARY OF KEY POINTS

1. Many grain shippers and producers are effectively disenfranchised by the STB's current rail rate regulations and procedures. Not only are they unable to file rate cases because of their high cost and complexity (under the SAC and SSAC and Three-Benchmark tests), but shippers and producers with no effective regulatory recourse have little or no bargaining leverage when seeking to pursue their preferred private sector solutions.
2. The railroads maintain that many grain rates are not excessive, at least under current URCS costing. The same is true as to rail rates on many commodities. It no more justifies the status quo, under which regulatory recourse is more apparent than real, than the existence of other non-jurisdictional rates would justify eliminating the STB. Moreover, unlike many other captive shippers, many grain shippers and producers cannot pass excessive or increased rail rates on to their customers, and the elevators that pay rail rates directly may not bear those rates in reality.
3. Current URCS costing procedures understate R/VC levels of grain rates. The STB's so-called make-whole adjustments drive down R/VCs for smaller grain shipments. The STB's requirement that only unadjusted average URCS costs can be utilized drives down R/VCs for shuttle and unit train grain shipments. There are also inaccuracies in the Confidential Waybill Sample. The Board should investigate and propose corrective measures in the next phase of this proceeding, and should consider implementation of the Grain Cost Adjustment Factor recommended by ARC, et al.
4. The fact that many grain rates are unlikely to be challenged indicates that the Board should consider an expansive definition of "grain." It would be inefficient as well as unfair to reduce the unavailability of regulatory recourse for some grain shippers and producers, but not others for whom relief is also foreclosed. Notably, 49 CFR 1300.5 refers to grain "and products thereof". As the STB has recognized in other contexts including market dominance determinations, if railroads are not abusing their market power, they have no reason to fight to preserve barriers to regulatory remedies.
5. The most vulnerable and most in need of new rate reasonableness methods are shippers and producers that do not ship in unit train or shuttle volumes. These shippers and producers pay the highest rates, face the largest rate increases, and receive the worst service, especially in the West, where service problems have recently reached historic proportions. Consideration should be given to facilitating joint rate challenges by grain shippers and producers. Recent rate increases have singled out the less-than-shuttle facilities with increasing rate differentials effectively making the less-than-shuttle facilities less competitive. Current URCS costing procedures understate R/VC levels of grain rates. The STB's so-called make-whole adjustments drive down R/VCs for smaller (less-than-shuttle) grain shipments.

6. Given the multi-year timetable for any action on these issues, it makes sense to consider next steps in conjunction with the Board's consideration of issues raised in EP 722, Railroad Revenue Adequacy. In this connection, ARC, et al. support consideration of the U.S. operations of Canadian Class I railroads, as urged by witnesses for NGFA, but we do not plan to address that issue at the hearing, given time limits and the need to avoid duplication in shipper presentations.
7. Once major grain hauling railroads are found to be long-term revenue adequate, the revenue adequacy constraint of Constrained Market Pricing may prevent future differential increases in rates based on relative shipper captivity. This will not remedy base rates that are already unreasonable prior to that development, but should prevent unreasonable base rates from becoming more unreasonable.
8. Railroad revenue inadequacy has, for almost 40 years, been the legal and economic justification for differential pricing of captive traffic. While differential pricing of rail transportation of grain (and other commodities) has plainly benefited major grain-hauling railroads, it has had less benign effects for grain shippers and producers, especially when they are small and isolated. Railroads subject to ineffective rate regulation may consider such customers as expendable if their grain could be handled by larger elevators or if other freight is more profitable. The railroads in this proceeding have argued that being required to charge grain rates that do not exceed lawful levels may lead to worse service.
9. For Class I railroads found to be long-term revenue adequate, ARC, et al. support a Two-Benchmark approach. The R/VCcomp benchmark is by far the most expensive and controversial to establish, and it is not necessary if differential pricing is no longer permitted for grain rate increases.
10. For grain-hauling railroads that have not yet been found long-term revenue adequate (and we doubt that any Class I railroads will be in this category much longer), ARC, et al. urge the Board to modify the R/VCcomp benchmark (in addition to addressing URCS and other costing concerns). Captive grain customers who find they must seek rate relief at the STB under the Three-Benchmark approach should be able to propose inclusion in the comparison group of rates charged by railroads other than the defendant(s), along with rates that are below 180% of variable cost.
11. NGFA supports these changes in the R/VCcomp benchmark, and also proposes an Ag Commodity Maximum Rate Methodology for use with all railroads, whether or not they are long-term revenue adequate. If the Board does not accept the above suggestions of ARC, et al., we urge the Board to propose the NGFA approach in the next phase of this

proceeding. USDA supports both the NGFA and ARC approaches as preferable to today's unworkable status quo.

12. The Board should also, at a minimum, take steps to increase transparency in grain rates, building on the increased transparency as to rail service under consideration in EP 724 (Sub-No. 4), United States Rail Service Issues – Performance Data Reporting. In recent years, the railroads have taken steps to reduce transparency as to grain rates, by reducing or eliminating the access to tariffs formerly available on their websites. The regulations at 49 CFR 1300.5 permit railroads to use printed or electronic tariffs for agricultural commodities, and charge for access, with higher charges for greater access. Given the ease and negligible costs (if any) of electronic access to documents today, the Board should require free access to electronic versions of rates, schedules of rates, charges and other service terms, with charges limited to printed (paper) documents provided by rail carriers. In addition, any person should have access to the data, with no requirement that the person seeking access be the shipper or an agent for the shipper.