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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**Docket No. EP 542 (Sub-No. 18)**

**REGULATIONS GOVERNING FEES FOR SERVICES**

**Comments of National Grain and Feed Association**

Original  
April 18, 2011  
Public Comment

In the notice and request published by the Surface Transportation Board (“Board”) on February 15, 2011, the Board proposes to amend the regulations governing user fees for the services it performs. Principally, the Board proposes to lower the fee for sub-item 56(iv) [all other complaints except competitive access] from \$20.600 to \$350. NGFA appreciates this opportunity to express its full support for this proposed rulemaking.

NGFA, established in 1896, is a U.S.-based nonprofit trade association that consists of more than 1,000 entities in the United States, Canada, and Mexico involved in all aspects of grain merchandising, processing, storage, transportation, feed manufacturing, integrated livestock operations, exporting, and importing grain and grain products. NGFA-member companies comprise over 6,000 facilities that handle more than 70 percent of U.S. grains and oilseeds. NGFA members include small country elevators, as well as the largest firms in the industry, most with access to only a single rail carrier at each of their rail-served facilities. Affiliated with NGFA are 35 state and regional grain and feed trade associations.

In its February 15 notice, the Board thoroughly explains why this modification of the fee schedule is logical and represents good policy. As the Board states, many of its fees have been historically set at relatively below-full cost levels, at least in part “to avoid any possible ‘chilling effect’ that higher fees would have on access by shippers and consumers to the Board’s adjudicatory process.” For example, fees for rate complaints and competitive access complaints

are already at or below \$350, the level of filing fees for complaints in district court. The large disparity in the fee structure between the relatively low fees for most complaints and for petitions for declaratory orders and the existing \$20,600 fee for all other formal complaints represents, as the Board states, “a gap that is not good public policy.” NGFA agrees that the significantly higher fee for filing formal complaints under item 56(iv) – currently \$20,600 – likely has a chilling effect on shippers and other entities seeking to bring a complaint to the Board.

The Board also refers to the hundreds of informal complaints addressed over the past 10 years by its Rail Consumer and Public Assistance unit. Many of those informal complaints are successfully resolved on a regular basis, but as the Board notes, none of the several that have gone unresolved have become the subjects of formal complaints before the Board.

NGFA and its members place tremendous value on the availability of a cost-effective and accessible mechanism to resolve disputes between railroads and rail users. NGFA Rail Arbitration, which provides for adjudication of certain types of disputes between railroads and shippers/receivers, has been operational for over 10 years, and it is widely perceived by both rail carriers and rail users as successful and workable. One of the key features of NGFA Rail Arbitration’s success is that it is designed to be cost-effective. The fee structure is based on the amount in dispute (e.g., the total fees for a \$20,000 claim are \$500). Most cases settle between the parties shortly after the claim is filed, and countless other potential claims are reportedly settled without the need for a formal complaint because the parties understand that an accessible adjudicatory process is available. Based on its own experience, NGFA believes that simply having access to a cost-effective process will itself enhance the resolution of disputes.

Respectfully submitted,

National Grain and Feed Association

Dated: April 18, 2011