

SURFACE TRANSPORTATION BOARD UPDATE

AMERICAN BAKERS ASSOCIATION

**Washington, D.C.
September 17, 2014**

Good morning. I'm Dan Elliott, Chairman of the Surface Transportation Board. I'm happy to be here this morning. This conference is a great opportunity for me to meet with you in an informal setting, to learn more about how recent difficulties in rail service have impacted your industry, and to speak about the work of the Surface Transportation Board.

I would like to thank the American Bakers Association for extending its invitation. Organizations like the ABA have an important voice in the broader railroad industry – in particular for grain shippers. I appreciate the concern that ABA has shown about rail service issues that have been hampering the industry since this past winter, and your interest in these issues, going forward. I'm going to focus my remarks on these issues so that

you will understand what the Board has been doing not only to improve rail service, but also to enhance transparency.

Before I get too deeply into the service issues, for those that are not familiar with the STB, I'll tell you a little bit about the agency. The Board is the agency charged by Congress with economic regulation of the freight rail industry. Our purview includes rail rates, practices, service issues, acquisitions, rail line construction and abandonment (among other things). We resolve disputes between carriers, between shippers/carriers, and lots of other things in between. We are decisionally independent from DOT (but administratively affiliated). The Board consists of 3 members. My fellow members are Deb Miller (former head of Kansas DOT) and Ann Begeman (tremendous Hill experience on transportation issues/from South Dakota).

The last year has been very challenging for many rail shippers, and for grain shippers in particular. By and large, rail carriers across the nation have acknowledged that their performance has suffered. There is disagreement as to how and why certain railroads fell short of service expectations. But, everyone agrees

that it is imperative that operations improve as quickly as possible and that railroads have appropriate plans in place to handle the growing amount of traffic on their lines.

A number of factors contributed to what some might call a “perfect storm” for subpar rail service. Over the past winter, sustained cold temperatures, coupled with significant snow accumulations in certain areas, created challenging railroad operating conditions. The harsh weather caused mechanical failures, disrupted crew movements, and forced some railroads to modify operating practices.

At the same time, traffic patterns changed in ways that certain railroads acknowledge they failed to anticipate adequately. In both the U.S. and Canada, the grain harvest yielded a bumper crop. The same lines carrying that crop were already seeing a marked increase in traffic related to shale oil production – both frac sand and unit train movements of oil. Colder temperatures increased energy demand, putting pressure on utilities to replenish coal stockpiles. And, intermodal traffic continued to rebound, bringing additional traffic into the major gateways.

What portion of the service problems is attributable to weather and what portion is attributable to traffic shifts/growth and carrier management decisions is subject to debate. Both railroads and shippers are frustrated. I know first-hand from many shippers about the impact on your businesses. At the Board, we continue to actively monitor and address the service problems with an eye toward making sure that the railroads are doing everything they can to improve service for all shippers. Equally important, the railroads must learn from this experience going forward, and implement appropriate contingency measures.

Near the beginning of this past winter, the Board began to receive a growing number of informal service complaints. Shippers from various commodity groups - agricultural, coal, chemical, and others - reached out to the agency, typically through our Office of Public Assistance, Governmental Affairs and Compliance (“OPAGAC”) – the “eyes and ears” of the Board. Their reports included the inability to obtain empty railcars; lost production and potential shut-down scenarios due

to delayed delivery of critical raw materials; lost business from severe logistical constraints; and, costly diversion of freight to other modes. Moreover, operating metrics that we always monitor began to show troubling trends on train speeds and terminal dwell, particularly on Canadian Pacific and the northern segments of BNSF Railway.

As service issues proliferated, OPAGAC, particularly the staff of our Rail Customer and Public Assistance (“RCPA”) program, worked behind the scenes with shippers and railroads to resolve individual service issues. RCPA initiated weekly service calls with CP and BNSF, regular calls with operating personnel from other carriers, and conference calls with shipper organizations. It also intensified its monitoring of rail performance measures. Additionally, OPAGAC held meetings in Fargo, ND with dozens of shippers from several states to better understand their service issues.

Cmr. Begeman and I (the only two members at the Board at the time) sent a joint letter to the chief executives of CP and BNSF, the railroads experiencing the most severe service disruptions.

We asked for detailed information relating to the causes of the problems and the plans for service recovery. We requested immediate in-person meetings with senior level executives, so that we could personally convey our concerns and gain a better understanding of remedial measures. These meetings were held at STB headquarters in mid-February and early March.

The Board announced and held a hearing on April 10th in Washington, DC to receive comments from railroad and shipper speakers. From my perspective, there were four key goals: (1) to better understand the nature and extent of service issues across the network; (2) to have the carriers present their plans to restore the network to normal operating conditions; (3) to hear from shippers about their difficulties and their perspective on the proposed solutions; and, (4) to make sure that the flow of information among our stakeholders improved. At the hearing, we heard from 9 separate panels, comprising over 40 speakers. Additionally, we received written comments from over 25 parties.

Just five days after that hearing, the Board issued an order directing CP and BNSF to provide plans to ensure fertilizer delivery in time for the spring planting season. The carrier reports over the next six weeks showed that BNSF carried 56 trains of fertilizer and CP carried 2,636 carloads. From all reports, it appears that the fertilizer need was met and that the carriers responded by making adjustments to their service to get product where it needed to go. Additionally, RCPA staff held informal meetings with shippers and other interested parties all over the country throughout the summer months to check on progress and try to alleviate severe problems.

After the April hearing, the Board continued to monitor the carriers' progress in moving the 2013 grain harvest. I do not need to tell this group that there have been major problems. By summer, the large quantities of grain that remained to be moved coupled with the new incoming harvest created significant concern about the railroads' paths towards meeting their respective commitments. On June 20th, the Board directed CP and BNSF to provide and/or update their respective plans to reduce the backlog of unfilled grain car orders, to resolve grain

car delays, and to provide weekly status reports regarding the transportation of grain on their networks (for CP, on its United States network).

For the eight week period following this second order, BNSF showed considerable progress in reducing the number of backlogged orders, and the average number of days late for such orders. By contrast, CP's reporting did not substantiate similar progress. An additional concern with regard to CP was its interchange with the Rapid City, Pierre & Eastern Railroad, Inc. (RCP&E), a new shortline railroad, which took over a line previously operated by CP, serving many of South Dakota's grain producers. During this same period, the Board continued to receive troubling reports from coal-fired utilities, ethanol manufacturers, propane shippers, automobile manufacturers and others about growing cycle times, unreliable service, and the potential impact on rail shippers and receivers. And, general railroad performance metrics – such as system average train speed, dwell time at major terminals, and cars online – reflected an industry still struggling to provide rail service at acceptable levels.

Because of its ongoing concerns, the Board held a formal field hearing in Fargo, N.D. on September 4th. At the Fargo hearing, the Board heard from 9 panels and approximately 40 speakers. Shippers of soybeans, corn, wheat and other agricultural products described continuing problems in rail service on the BNSF and CP networks, and a concern for reliable service into the next harvest. Coal and ethanol shippers informed the Board of continued problems of erratic service, increasing cycle times and stopped train sets, leading to potential shut-down scenarios. All shippers and several representatives of state governments expressed a need for greater transparency and reporting of rail performance data in real time. Both BNSF and CP acknowledged that their respective recoveries had not proceeded as well as they hoped, but expressed cautious optimism that service improvements would occur in the fall, in particular for agricultural shippers.

At present, the Board is considering what additional steps may be necessary to facilitate the recovery of the rail system. Under our governing statute, we have a range of available tools that

could be used for this purpose, depending on the scope and magnitude of the ongoing service problems. Further regulatory action may be warranted for expediting the overall recovery or alleviating particularly intractable service failures. I believe, however, that any such action should not benefit one industry at the expense of others, or spur unintended negative consequences. If anyone was at the Fargo hearing, you heard each Board member express a desire to “do no harm.” My goal is to facilitate effective solutions that benefit all shippers and lead to an even stronger freight rail system. At the Board, we are working hard to make this happen in conjunction with our varied stakeholders. I know that you know that the rail system is a key part of the U.S. economy, even if it is under most people’s radar most of the time.

As big as the service issues are, the Board is also handling many other important issues. I want to highlight two proceedings that may be of particular interest to ABA and its members.

In the area of rate regulation, we initiated a new proceeding in December 2013 to look at whether grain shippers have

meaningful access to relief. We know that many grain shippers are captive. But, despite our efforts to simplify our rate case procedures, we have not received a formal rate complaint from a grain shipper in over 30 years. We have received many public comments, and I anticipate that we will hold a public hearing in this case.

Also, the Board is currently examining competitive rail access in a proceeding referred to as “Ex Parte 711.” This case is an outgrowth of our general examination of competition in the rail industry back in 2011. Competitive access is a huge issue – one that has been at the core of railroad/shipper disputes for many years. We held a two-day public hearing on the issue in March 2014. We heard from, and were able to directly question seven witness panels, comprised of proponents and opponents of the proposal. These presentations were very informative, and helped to crystallize some of the key issues as well as the relationship between competitive access and other issues the Board is grappling with. We continue to carefully review the record and the testimony in this important proceeding.

I'll end where I started with telling you a little more about what the Board does. We basically exist to help resolve disputes. If you have a rail service issue that you need informal assistance with, we have an entire department that can help. Our RCPA group can often help facilitate solutions in all kinds of disputes. We've also got a pretty serious ADR program that includes mediation as well as arbitration. Moreover, with regard to continuing rail service issues, we need to hear from shippers about what you are continuing to experience – whether it is positive or negative news. Please consider us a resource.

In closing, I want to thank you for this opportunity to speak about the Board and its work. The Board will continue to conduct public outreach and hold hearings on significant cases and rulemaking proceedings, so that the Board and its staff can hear directly from our stakeholders such as the American Bakers Association and its members. I would be happy to answer questions (at least those that do not relate to pending cases).

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