THE FERTILIZER INSTITUTE
NORTH AMERICAN TRANSPORTATION CONFERENCE

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SURFACE TRANSPORTATION BOARD UPDATE

Good morning. I'm Dan Elliott, Chairman of the Surface Transportation Board. I'm glad to be here. This conference is a great opportunity for me to meet with you in an informal setting, to learn more about how the challenging operating conditions over the last several months have affected our stakeholders, and to speak about the work of the Surface Transportation Board.

I would like to thank The Fertilizer Institute ("TFI") for extending its invitation. Organizations like TFI have an important voice in the broader railroad industry, and TFI's members are heavily dependent on rail transportation to move their products – at some point nearly all the fertilizer shipped in North America touches a railroad. During my tenure as

Chairman, TFI has been a frequent participant in STB proceedings, and its comments and contributions are always valuable to our decision-making. In particular, I appreciate the interest that TFI and its members have shown in the service issues affecting the rail network since this past winter.

My remarks today are going to focus on rail service, which I'm sure has been a focus of yours this difficult year. I want to share with you what the Board has been doing to facilitate an improvement in rail service and transparency.

As many of you know first-hand, the last year has been very challenging for stakeholders, in particular shippers of agricultural products. By and large, the Class I railroads have acknowledged that their performance has suffered. There is disagreement as to how and why the large railroads fell short of service expectations. But, everyone agrees that it is imperative that operations improve as quickly as possible and that the large 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. Last 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. The cold winter 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 and growth versus carrier management decisions is subject to debate. Both railroads and shippers are frustrated. At the Board, we continue to actively monitor and address the service problems with an eye toward making sure that the Class I railroads are doing everything they can to improve operations. Equally important, the major railroads must learn from this experience going forward, and implement appropriate contingency measures.

Toward the beginning of last 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"). 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 spread, the staff of our Rail Customer and Public Assistance ("RCPA") program worked behind the scenes with shippers and railroads, including many shippers of agricultural commodities, to resolve individual service problems. 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.

Board Member 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 held a hearing on April 10th in Washington, D.C. 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. We also received written comments from over 25 parties. Based on testimony and written submissions, it became apparent that along with reports of widespread service problems, we were facing a potential emergency with respect to rail delivery of fertilizer for the spring planting season. Just five days after that hearing, the Board issued an order directing CP and BNSF to provide plans to ensure that fertilizer deliveries would meet the urgent needs of the agricultural sector. The carriers' filings over the next six weeks showed that BNSF carried 56 trains of fertilizer and CP carried approximately 2,600 carloads. From all reports, the acute fertilizer need was met and 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.

The Board continued to monitor the carriers' progress in moving the 2013 grain harvest. By summer, the large quantities of grain that remained to be moved coupled with the 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 acceptable service.

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.

The Board continues to carefully consider what additional measures might be warranted to facilitate rail service improvements in light of the tools available under our governing statute. It is my view that the Board must ensure that its actions not benefit one industry at the expense of others, or cause unintended negative consequences. On October 8th, we issued an interim order, requiring all Class I railroads to file with the Board on a weekly basis several items of performance data. The purpose behind this order was to provide both the Board and the public with real-time information about rail service and the state of the network; to enhance our ability to detect emerging problems; and, to provide shippers with information that will allow them to better mitigate supply chain disruptions. We believe that greater transparency flowing from this order will help railroads and shippers – and the Board – work through this difficult period.

There are two other points that I want to make about this order. First, it is a temporary order that flows from our recent hearings and current service issues. The Board has stated that it intends to commence a rulemaking proceeding in the near future to consider whether to devise permanent service reporting requirements for Class I railroads. Our experience with the interim order, and the comments we receive from railroads, shippers, and the public will inform and shape that proposal. Second, we understand that the rail industry is still in recovery-mode, and is working collaboratively in some areas to improve operations, going forward. I support and encourage those efforts and appreciate communications from Class Is on this front.

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 TFI and its members.

As many of you know, 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 (including revenue adequacy). I continue to work with Board staff on next steps. I know it is an area of great concern for your members and all the Board’s stakeholders.

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're also looking more broadly into rail rate regulation and revenue adequacy. We started a proceeding to look at revenue adequacy and what it means today.

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 an 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. They have a wealth of experience working with both large and small railroads and customers, and know many stakeholders on a first-name basis. On the formal side, we've also got a very strong ADR program that includes mediation as well as arbitration. Moreover, with regard to the rail service issues, we need to continue to hear from TFI and its members about what you are experiencing – 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 TFI. I would be happy to answer questions.

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