

SOUTH DAKOTA FARMERS UNION

NOVEMBER 20TH

ABERDEEN, SD

SURFACE TRANSPORTATION BOARD UPDATE

Good morning. I'm Dan Elliott, Chairman of the Surface Transportation Board. I'm glad to be here. This convention is a great opportunity for me to meet with you in an informal setting, to learn more about how you are being affected by challenging railroad operating conditions, and to speak about the Board's work.

I would like to thank the South Dakota Farmers Union for extending its invitation. Organizations like this one have an important voice in the broader railroad industry, and I appreciate the interest that the South Dakota Farmers Union 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

during 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. But, everyone agrees that it is imperative that operations improve as quickly as possible.

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 railroad 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 Office of Public Assistance worked behind the scenes with shippers and railroads, including many shippers of agricultural commodities, to resolve individual service problems. There were weekly service calls with CP and BNSF, regular calls with operating personnel from other carriers, and conference calls with shipper organizations. The Office of Public Assistance also intensified its monitoring of rail performance measures. Additionally, the Office of Public Assistance 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 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 needs of the agricultural sector. The carriers' filings over the next six weeks showed that BNSF moved 56 unit 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.

After the hearing, I sent Board staff to hold informal meetings across the country, including one in Sioux Falls on May 6, to speak with stakeholders about service challenges. And, 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 the eight week period following this second order, BNSF showed success 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 here in South Dakota that was just sold by CP to Genesee & Wyoming. After the sale of the line, initial reports indicated that locomotive and railcar supply were poorly coordinated, resulting in service problems.

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. I was grateful for the testimony of Secretary Lentsch, who I have spoken with regarding rail issues in South Dakota, as well as the testimony of the South Dakota Feed & Grain Association.

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.

Our data order 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.

I also 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 between Class Is on this front. There is continuing work to be done both with regard to transparency and service improvement.

My staff has worked closely with the State of South Dakota and Senator Thune to ensure better communication with the railroads and to gather the data necessary to have productive discussions.

I appreciate the concerns of rail shippers in this state.

Addressing service issues is my top priority.

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

First, 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 opening and reply comments in this case, and we expect to hold a public hearing to delve into the key issues. I encourage representatives of the Farmers Union to participate.

Second, also in the area of rate regulation, I'll note that we have awarded a contract for an independent study on alternatives to our existing rate case methodologies. I look forward to sharing that report in 2015.

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 Rail Customer and Public Assistance 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. Moreover, with regard to the rail service issues, we need to continue to hear from the South Dakota Farmers Union and its members about what you are experiencing – whether it is positive or negative news.

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. I would be happy to answer questions.

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