

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 724 (Sub-No. 2)

UNITED STATES RAIL SERVICE ISSUES—GRAIN

Digest:¹ Based on concerns raised before and after the public hearing on this matter, the Board is requiring Canadian Pacific Railway Company and BNSF Railway Company to publicly file their plans to timely resolve their backlogs of grain car orders, as well as weekly status reports pertaining to grain car service.

Decided: June 20, 2014

Early this year, the Board began hearing about service problems occurring across significant portions of the nation's rail network, particularly on the Canadian Pacific Railway Company (CP) and BNSF Railway Company (BNSF) systems. In response, the Board sent separate letters to CP and BNSF requesting information on how each Class I planned to restore its service levels.² Pursuant to a decision served on April 1, 2014, in United States Rail Service Issues, Docket No. EP 724, the Board held a public hearing on April 10, 2014, at its offices in Washington, D.C., to provide interested persons the opportunity to report on recent service problems in the United States rail network, to hear from rail industry executives on plans to address their service problems, and to discuss additional options to improve service. During the hearing, farmers and representatives of agriculture producers described severe, negative effects resulting from backlogged grain car orders and delayed shipments of loaded grain cars. The reported impacts included, for example, elevators running out of storage capacity, risks of stored

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² Letter from Daniel R. Elliott III, Chairman, and Ann D. Begeman, Vice Chairman, Surface Transportation Board, to E. Hunter Harrison, Chief Exec. Officer and Dir., Canadian Pacific Railway Company (Mar. 6, 2014), available at <http://stb.dot.gov> (open tab at "E-Library," select "Correspondence," select "Fall Peak Letters," follow "03/06/2014" hyperlink, and select the ".pdf" icon); Letter from Daniel R. Elliott III, Chairman, and Ann D. Begeman, Vice Chairman, Surface Transportation Board, to Carl Ice, President and Chief Exec. Officer, BNSF Railway Company (Feb. 5, 2014), available at <http://stb.dot.gov> (open tab at "E-Library," select "Correspondence," select "Fall Peak Letters," follow "02/05/2014" hyperlink, and select the ".pdf" icon).

grain spoiling, and penalties incurred by grain shippers for products that are not delivered on time.

Backlogged grain car orders and grain shipping delays and the resulting problems have been particularly acute on the systems of CP and BNSF. At the hearing, CP's President and Chief Operating Officer estimated that CP's service would be restored to normal in four to six weeks "if everyone does their part."³ BNSF has committed to moving last year's crop prior to the fall harvest.⁴ Following the hearing, staff from the Board's Rail Customer and Public Assistance Program met with shippers and other interested persons in many of the affected areas.

Since the hearing, BNSF and CP have provided data to the Board on a regular basis regarding the status of their operations and their progress in resolving the ongoing service issues.⁵ BNSF has described to the Board its 2014 plans to add employees, locomotives, and make additional capital investments.⁶ BNSF's plans indicate that a significant portion of these increases to personnel and equipment will be allocated to its Northern corridor, which carries a significant amount of grain traffic.⁷ CP's public submissions to the Board, however, have not to date clearly articulated its plans for resolving the grain car order backlog in the near term.

³ See Surface Transportation Board, hearing in U.S. Rail Serv. Issues, EP 724, pt. 3 at 00:04:55 (Apr. 10, 2014), available at <http://www.stb.dot.gov/stb/audiomee.nsf> (follow "4/10/2014" hyperlink, and follow "Hearing041014_3.wmv" hyperlink).

⁴ Letter from Carl R. Ice, President and Chief Exec. Officer, BNSF Railway Company, to Daniel Elliott, Chairman, Ann Begeman, Vice Chairman, and Debra Miller, Commissioner, Surface Transportation Board (May 7, 2014), at 2, available at <http://stb.dot.gov> (open tab at "E-Library, select "Correspondence," select "Fall Peak Letters," follow "05/07/2014" hyperlink, and select the ".pdf" icon); Letter from Carl R. Ice, President and Chief Exec. Officer, BNSF Railway Company, to Daniel Elliott, Chairman, Ann Begeman, Vice Chairman, and Debra Miller, Commissioner, Surface Transportation Board (June 4, 2014), at 2, available at <http://stb.dot.gov> (open tab at "E-Library, select "Correspondence," select "Fall Peak Letters," follow "06/04/2014" hyperlink, and select the ".pdf" icon).

⁵ See, e.g., BNSF Railway Network Velocity and Service; STB Status Update (May 30, 2014), available at <http://stb.dot.gov> (open tab at "E-Library, select "Correspondence," select "Fall Peak Letters," follow "06/04/2014" hyperlink, and select the ".pdf" icon). This document, at 4, shows BNSF's performance versus projections on a weekly basis for working through its backlog of unfulfilled grain car orders, measured in terms of number of cars and average days late.

⁶ See BNSF Oral Argument Ex. at 17, 19, and 20, U.S. Rail Serv. Issues, EP 724 (filed Apr. 10, 2014). BNSF also tracks its progress toward hiring and equipment goals in its biweekly reports available on the Board's website. These biweekly reports are available at <http://stb.dot.gov> (open tab at "E-Library, select "Correspondence," select "Fall Peak Letters," select the desired service report hyperlink, and then select the ".pdf" icon).

⁷ BNSF Oral Argument Ex. at 20, U.S. Rail Serv. Issues, EP 724 (filed Apr. 10, 2014).

Although the data submitted by both railroads indicates some initial progress toward reducing their grain car order backlogs and grain car delays, the Board remains very concerned about the limited time period until the next harvest, the large quantities of grain yet to be moved, and the railroads' paths toward meeting their respective commitments. For these reasons, pursuant to 49 U.S.C. § 721(b), the Board will direct CP to provide its plan, and BNSF to provide an updated plan, by June 27, 2014, to reduce their respective backlog of unfilled grain car orders and resolve grain car delays (for CP, on its United States network) including their timeline for doing so. CP's report shall specifically address its plan for ensuring a fluid and reliable interchange of loaded and empty grain cars with Rapid City, Pierre & Eastern Railroad, Inc. (RCP&E). The Board will further direct CP and BNSF to provide weekly status reports, beginning June 27, 2014, regarding the transportation of grain⁸ on their networks (for CP, on its United States network). As part of these status reports, CP and BNSF shall provide, by state, the running total of outstanding grain car orders at the end of the week, the total number of new orders for the week, the total number of orders filled for the week, the number of orders cancelled by shippers for the week, the number of orders cancelled by CP or BNSF for the week, and the average number of days late for all outstanding grain car orders. CP and BNSF shall also report the number of cars allocated to grain car service each week, including the number of private cars in service. CP's report shall include the number of grain cars requested by RCP&E and the number of cars furnished by CP on a weekly basis. These reports will be required until each carrier resolves its backlog of unfilled grain car orders.

Technical questions regarding compliance with this order may be directed to the Board's Office of Public Assistance, Governmental Affairs and Compliance.

This directive is intended to focus each railroad's attention on working through its backlog of grain car orders and improving its service to grain shippers while simultaneously addressing the extensive service and car supply issues for all commodities across its rail network. The Board continues to closely monitor rail service metrics for all movements and to consider other efforts to address rail service issues.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CP is directed to report to the Board, by June 27, 2014, its plan to resolve the backlog of grain car orders on its United States network, including its timeline for doing so, and its plan for ensuring a fluid and reliable interchange of loaded and empty grain cars with RCP&E.

⁸ For purposes of this order, the term "grain" shall refer to, and include the following Standard Transportation Commodity Codes: 01131 (barley), 01132 (corn), 01133 (oats), 01135 (rye), 01136 (sorghum grains), 01137 (wheat), 01139 (grain, not elsewhere classified), 01144 (soybeans), 01341 (beans, dry), 01342 (peas, dry), and 01343 (cowpeas, lentils, or lupines).

2. BNSF is directed to report to the Board, by June 27, 2014, an updated plan to resolve the backlog of grain car orders on its network, including its timeline for doing so.

3. CP and BNSF are directed to provide weekly status reports, beginning June 27, 2014, regarding the transportation of grain on their networks (for CP, on its United States network). As part of these status reports, CP and BNSF shall provide, by state, the running total of outstanding grain car orders at the end of the week, the total number of new orders for the week, the total number of orders filled for the week, the number of orders cancelled by shippers for the week, the number of orders cancelled by CP or BNSF for the week, and the average number of days late for all outstanding grain car orders. CP and BNSF shall also report the number of cars allocated to grain car service each week, including the number of private cars in service. CP's report shall include the number of grain cars requested by RCP&E and the number of cars furnished by CP on a weekly basis. These reports will be required for each carrier until it resolves its backlog of unfilled grain car orders.

4. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.