



Report to ARC members Mid-Summer, 2015

ARC members received two good ‘news’ events on Rail Grain Transportation in the month of June, 2015.

First, after working in DC for 10 years the Rail Customer Coalition and the Alliance for Rail Competition (ARC), were successful in getting the Senate to pass unanimously S 808 – The Surface Transportation Board Reauthorization Bill of 2015 which brings reform and relief to the rail shippers in the U.S. and especially to the captive shippers such as farm producers in Montana. After 10 years of working to develop captive rail coalitions in D.C. and getting to become an effective education voice, the Senate passes an historic Surface Transportation Bill Reauthorizing Act of 2015 by unanimous consent.

Rail shippers, farm producers and members of agricultural organization applaud Senate passage of the legislation to reform freight rail policies.

The Alliance for Rail Competition together with its many members and shipper coalitions, have been working for over 10 years to bring needed reforms to the STB.

Terry Whiteside, ARC’s Chairman issued a statement on this passage. “The Alliance for Rail Competition has worked tirelessly for many years to bring modernization of rail policy to the STB. ARC has concentrated for many years on building rail customers coalitions. It has continued, for many years, to bring together members of the utilities, sand and glass, agriculture, and manufacturing heading up and participating in rail customer coalitions, such as Rail Customer Coalition. Its focus has been to build a stronger federal regulatory structure and address the needs of rail shippers nationwide especially those who do not have access to rail-to-rail competition. ARC recognizes the work of their Washington

Representatives, Meyers and Associates, for their enduring work on providing education and factual predicate in the lead up to the Senate passage of S-808.”

In a second major event in DC, the Surface Transportation Board (STB) has focused on grain regulatory procedures and is reviewing them in its official capacity as the agency that provides regulatory oversight over the nation’s railroads. Montana Farmers Union, the Montana Department of Agriculture, Montana Wheat and Barley Committee, Colorado Wheat Administrative Committee, Oklahoma Wheat Commission, Nebraska Wheat Board, Texas Wheat Producers Association, Wyoming Wheat Marketing Commission, Idaho Wheat Commission, Idaho Barley Commission, South Dakota Wheat Commission, Washington Grain Commission, Oregon Wheat Commission together with the Alliance for Rail Competition (ARC) participated together at an STB on June 10, in a hearing before the STB in Washington D.C.

On June 10, 2015, the Surface Transportation Board held a day-long oral hearing in STB Docket EP 665 (Sub-No. 1), Rail Transportation of Grain, Rate Regulation Review. The STB opened the hearing with its reasoning why it felt that rail grain transportation is unique and access to the rate regulatory review process has not been available to the grain producers in this country. The STB, in its call to this hearing and this proceeding, requested the participants propose new or revised methodologies for regulatory remedies for grain rate and service disputes.

Only two hearing participants developed and submitted proposals for STB consideration – The Alliance for Rail Competition together with many other wheat and barley Commission/Committees and the National Grain and Feed Association. Thus STB focused on these two principal shipper proposals. The railroads chose not to submit any proposal – indicating to the STB that the reasons for the lack of grain shippers filing rate adjudication action over the last 35 years (since the Staggers Rail Act of 1980) is that grain shippers are happy with the rates thus no rate case actions are necessary.

In general, the railroad participants, including the Association of American Railroads and six-member rail carriers (BNSF, UP, CSX, NS, CP and CN), argued that rail rates on grain are generally not excessive (which was not what the STB wanted to examine in this proceeding), and that existing STB rate regulation

remedies are adequate. In other words, they argued that the STB should DO NOTHING about Grain Rate Regulation changes.

ARC et al called on the STB to modify its simplest and least costly test of grain rate reasonableness, the Three-Benchmark test by changing it to a Two-Benchmark test, by allowing challenged grain rates to be compared with rates charged by other railroads (e.g., allowing for example BNSF rates to be compared with UP rates) and with rates charged on similar grain shipments that are not captive to a single monopoly railroad. In addition, ARC called for an even simpler test to be used when a major grain-hauling railroad has been found “revenue adequate” as defined by the STB. (BNSF and UP are at or near that milestone.)

NGFA offered a new approach, called the *Ag Commodity Maximum Rate Methodology*, which is similar in some respects to the ARC proposal. Both NGFA and ARC generally supported each other’s proposals, and USDA supported both proposals as far better than the regulatory status quo.

The STB members asked many questions, and seemed more interested in ensuring that grain shippers and producers have effective regulatory remedies than in listening to arguments over whether current grain rates are or are not too high. The STB members left the record in this proceeding open until June 24, 2015 for the filing of follow-up comments. ARC et al and its Wheat and Barley Committee/Commissions plan to make such a filing. In addition, it was noted that another STB hearing, on the implications of railroad revenue adequacy for STB regulation, is scheduled for July 22-23, 2015 which will also be important as the Board explores the farm producers plight in the rail transportation of grain.

In summary, 2015 has been an exciting and uplifting month in moving the farm producers unique position forward in the rail transportation world.