



ARC

*Alliance for
Rail Competition*

412 First St. S.E., Suite One, Washington, DC 20003
Phone (202) 484-7133, Fax: (202) 484-0770 www.railcompetition.org

To ARC Membership,

On September 5th, the Alliance for Rail Competition together with the Montana Wheat & Barley Committee, the Colorado Wheat Administrative Committee, the Idaho Barley Commission, the Idaho Grain Producers Association, the Idaho Wheat Commission, the Montana Farmers Union, the Nebraska Wheat Board, the Oklahoma Wheat Commission, the South Dakota Wheat Commission, the Texas Wheat Board, the Washington Grain Commission, the Wyoming Wheat Marketing Commission, the National Association of Wheat Growers, the U.S. Clay Producers Traffic Association, Inc. and the USA Dry Pea and Lentil Council filed Reply Comments in the Uniform Rail Costing System proceeding being conducted by the STB. The Team - John Culter, Gerald Fauth and Terry Whiteside represented you in this proceeding.

These Reply Comments are of a technical nature. The following provide you with an general overview so the contents are understandable.

The Alliance for Rail Competition (“ARC”) and the other shipper groups identified on the cover of these Reply Comments (collectively, “ARC, et al.”) have seen little in the comments filed by other parties in this proceeding to mitigate our concern that the Board is pursuing an arguably desirable goal – more accurate costing of railroad services for regulatory purposes – in a questionable and possibly unlawful manner. We have taken the Board to task in this proceeding for not allowing shippers access to pertinent information to be able to provide pertinent and relevant comments. "The question bears repeating: Why did the Board provide full access to Waybill Sample data (subject

to protective orders) in EP 711 (Competitive Switching Rules), but deny such access in this proceeding?"

Gerald Fauth of G.W Fauth and Associates, Inc. who is part of the team representing all of you, stated in his Reply Verified Statement filed with this submittal, The Opening Comments of several other parties show that ARC, et al. are not alone in expressing concern for the lack empirical evidence to support the Board's proposed changes. For example, the Opening Comments of American Chemistry Council, The Chlorine Institute, The Fertilizer Institute, and The National Industrial Transportation League (collectively the "Interested Parties") states that the URCS proposals are "most notable for the lack of any studies or empirical analyses to support the Board's proposals." [1] The Association of American Railroads (AAR) also states that the URCS proposals "are not supported by any empirical evidence that show that the changes would result in more accurate costs" and maintains that several "special studies" would be required. [2] There is clearly a lack of empirical evidence to support the Board's URCS proposals.

The Board must also recognize that shippers and railroads do not look at STB proceedings in isolation. Business plans, distribution patterns and the investments and hard work of captive shippers, large and small, are affected by the totality of STB regulation of the railroad industry and by railroads' operational and commercial responses to laws, regulations and policies implemented by the Board.

The fact remains that, of the captive shippers represented by ARC, et al., some of the most vulnerable are shippers using 50-79 cars for some or all of their shipments. Many such shippers pay high (and rapidly increasing) rates and receive poor service. In this proceeding, the Board has proposed to redefine trainload as 80 cars or more. The implications of this proposal for recourse by such shippers to Board remedies are obviously of concern to ARC, et al.

Despite our concerns, ARC, et al. have attempted to provide helpful technical comments in this proceeding, relying on Mr. Fauth's long experience in ICC and STB cases. However, the Board is urged to move ahead more cautiously as to URCS revision issues. URCS modernization should not take place based on the record in this proceeding but should be deferred until additional data is collected or produced, and made available for analysis and comment by the affected parties.

Gerald Fauth again in his Reply Verified Statement, stated . "I also noted that the railroads are in possession of the necessary data and should, without too much effort, be able to provide data for the last three years (2010, 2011 and 2012), which could then be used by the STB and other parties to test the Board's proposal in regard to the proposed URCS adjustments. It is interesting to note that the AAR cites the lack of empirical evidence when, in fact, the railroads are in possession of all or almost all such evidence and/or data which could be used to produce such empirical evidence."

ARC, et al., and their members which represent a broad cross-section of this nation's shippers continue to have serious concerns regarding the proposed change in the definition of a trainload from 50 to 80 cars, due to the absence of any "empirical evidence" to show that this proposal would result in "more accurate costs."

In 2011, for example, 1,184,053 million carloads moved in shipments ranging from 50 to 79 carloads per shipment. This large number of shipments that are currently considered trainloads carried approximately 124 million tons and generated over \$2.1 billion in annual railroad freight charges. Shippers of Farm Products (STCC 01) would be among the largest traffic groups impacted by the STB's proposed change, as over 250,000 carloads moved in shipments ranging from 50 to 79 cars .

Mr. Fauth observes that the Association of American Railroads (AAR) "points to a lack of empirical evidence and the need for special studies." Mr. Fauth correctly opines that "many unit train coal movements and shuttle train grain movements essentially involve no (\$0) switching cost since, in such cases, the locomotives and crews remain with the trains and load and unload via loop tracks. I also pointed out that in many cases, shipments are switched in a single block of cars with several or many other shipments, in which cases the allocation of switching costs on a per car basis may be more appropriate.... I suggest that the STB gather information from the railroads relating to the number of cars per shipment per switching event or block."

Other topics addressed in our filing included:

- **AAR's Proposed Intermodal Adjustment**
- **Proposed Use of Average Empty/Loaded Ratios for Dedicated Unit and Shuttle Trains**
- **Proposed Locomotive Unit-Mile Adjustment**
- **Proposed I&I Switching Adjustment (Intra and Inter Train Switching**

Finally, regarding the issue of the STB's redactions of certain Confidential Waybill Sample fields hampered the ability of ARC et al. and other parties in their efforts to develop certain impact analyses. By redacting the revenue fields, parties were obviously not able to determine and evaluate the Revenue to Variable Cost (R/VC) ratios associated with each record (the Railroad's had these numbers but the shippers were not allowed to access them). Therefore, parties were precluded from using the data to perform certain STB jurisdictional impact analyses. For example, ARC et al. could not determine the amount of jurisdictional grain traffic (i.e., R/VC>180%) traffic moving in trainloads ranging from 50 to 79 cars which would be potentially deregulated (i.e., drop below 180%) as a result of the STB's proposed change in the definition of a trainload from 50 to 80 cars per shipment.

A note to everyone: This is a very important proceeding going forward - the STB has indicated that it is going to open in the next month or so, a proceeding addressing rate reasonableness and standards in the rail movements of agricultural products. It is extremely important that the STB understand the issues in transportation which bear on all captive shipper movements.

If you have any questions or comments, please let us know. And thank-you for the opportunity to represent you.

Terry Whiteside

Whiteside & Associates

3203 Third Avenue North, Suite 301

Billings, Montana 59101

Email: twhitesd@wtp.net

Phone: 406-245-5132