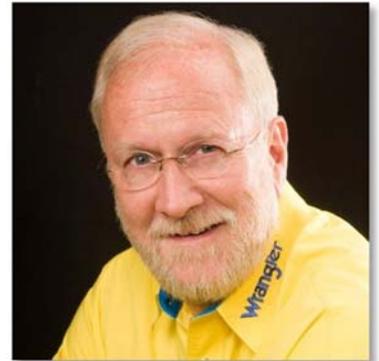


TRANSPORTATION REPORT

From: Terry Whiteside

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AGRICULTURAL SHIPPERS ARE PREPARING FOR THE NEW STB PROCEEDING ON RATE COMPLAINT PROCEDURES ACCESSIBILITY BY GRAIN SHIPPERS

The STB opened on December 9, 2013 a new proceeding entitled, Ex Parte No. 665 (Sub No. 1) - *Rail Transportation of Grain, Rate Regulation Review* wherein the Surface Transportation Board invites public comment on how to ensure the Board's rate complaint procedures are accessible to grain shippers and provide effective protection against unreasonable freight rail transportation rates.

Comments were extended and are now due by May 12, 2014. Replies are due by July 12, 2014.

The main reason the Board is opening this proceeding is due to agricultural growers participation in various STB proceedings over the last three years. It has heard agriculture's concerns and it is responding to its

concerns about the lack of agricultural producers' ability to avail themselves of the STB's regulatory oversight. The National Association of Wheat Growers Association, U.S. Wheat and 11 Wheat and Barley Commissions/Committee have met with the STB Board members and provided education about why current Board rate complaint procedure are inaccessible to the growers and those do not provide regulatory protections against service and rail rates that are excessive.

"On November 2, 2006, the Board held a hearing in Rail Transportation of Grain, Docket No. EP 665, as a forum for interested persons to provide views and information about grain transportation markets. The hearing was prompted by concerns regarding rates and service issues related to the movement of grain raised by Members of Congress, grain producers, and other stakeholders. When it closed that proceeding in January 2008, the Board reasoned that guidelines for simplified rate procedures had recently been adopted, providing a new avenue for rate relief for grain shippers. Rail Transp. of Grain, EP 665, slip op. at 5 (STB served Jan. 14, 2008)¹. The Board also noted that it would continue to monitor the relationship between carriers and grain interests, and that if future regulatory action were warranted, it would open a new proceeding. Rail Transp. of Grain, EP 665, slip op. at 5."

¹ Referring to Simplified Standards for Rail Rate Cases, EP 646 (Sub-No. 1) (STB served Sept. 5, 2007), *aff'd sub nom. CSX Transp., Inc. v. STB*, 568 F.3d 236 (D.C. Cir.), vacated in part on reh'g, 584 F.3d 1076 (D.C. Cir. 2009).

“The Board recently concluded a proceeding to reform freight rail rate regulations generally. See Rate Regulation Reforms, EP 715 (STB served July 18, 2013), appeal docketed, No. 13-1230 (D.C. Cir. July 29, 2013). In that proceeding, parties representing grain shippers’ interests argued that the proposed changes did not provide meaningful relief to grain shippers². One party also noted that, despite increases in rates, no grain shipper has sought rate relief at the Board or the Interstate Commerce Commission since 1981, and that the Board should consider providing more substantial modifications to its rate process to provide a mechanism for grain shippers to challenge rates³. On the other hand, one carrier argued that grain rates are not unreasonably high and that the Board's rate methodology has not been shown to be flawed with respect to that traffic⁴.

“We believe it is appropriate to consider what regulatory changes could be implemented to ensure that the Board’s rate case procedures are fully accessible to grain shippers and provide effective relief from excessive freight rail rates, as appropriate. The Board is seeking input from interested parties on grain shippers’ ability to effectively seek relief for unreasonable rates, including proposals for modifying existing procedures, or new alternative rate relief methodologies, should they be necessary.”

² National Grain and Feed Association (NGFA) Opening 4-5, Rate Regulation Reforms, EP 715; Alliance for Rail Competition, Montana Wheat & Barley Committee, Colorado Wheat Administrative Committee, Idaho Barley Commission, Idaho Wheat Commission, Montana Farmers Union, Nebraska Wheat Board, Oklahoma Wheat Commission, South Dakota Wheat Commission, Texas Wheat Producers Board, and Washington Grain Commission Opening 6-12, Rate Regulation Reforms, EP 715.

³ NGFA Opening 3-4, Rate Regulation Reforms, EP 715

⁴ BNSF Ry. Co. Reply 10, Rate Regulation Reforms, EP 715.

BNSF RAILWAY COMPANY RAILWAY PERFORMANCE NUMBERS CONTINUE TO SLIP

In August, 2013, it became apparent that something was amiss on the railroad. It was blamed on the railroad doing maintenance and capital improvements on the northern line in ND and eastern Montana.

However, as the summer construction system came to an end in late September and early October it was clear that the problems with rail movements were not improving --- it was getting worse in a hurry.

Then the shippers started hearing about power and locomotive crew shortage due to rapid increases in oil shipments from the Bakken oil reserves. The BNSF announced that it was increasing its shipping capabilities to move up to 1,000,000 barrels of oil per day. This may sound like a lot, and it does affect the highline grain movements but compared to the movements over the whole BNSF system – this was less than 10% of the system movements.

But the news kept getting worse. The Train Speed on the BNSF which generally run about 24.5-26 miles per hour were dropping from 24.1 in July, 2013 to 22.7 in December, 2013. Today the average train speed is down to 20.9 mph and appears to continue to drop each week. A 10-15% drop in average speed requires more cars or longer trains to make up volume. What a congested railroad does not need is more cars or trains on the rail system. Think of this like a highway that is slowing down to a crawl.....will more cars coming on to the freeway help clear the system? No.

Next the news from the railroad was that the wheat crop harvested in the fall of 2013 was at or above normal and the corn harvest was well above normal.

As we dove further into the early winter, the reports of a cold winter further complicated the movements of trains. In colder weather, especially severe cold, the trains have to be shortened because the air hose system cannot provide sufficient air pressure to full length trains. Shorter trains, means more trains have to be marshalled to move the goods.

To recap: Summer and Fall construction, followed by a good wheat crop, compounded by locomotive shortage (and crews), movement of large corn crop and the onset of cold weather has created an every worsening scenario. The good news – Union Pacific does not appear to be having these problems with their system movements even though they move a large amount of wheat, soybeans and corn.

What has happened, and it was predictable, was that dwell times on the BNSF has increased materially. This means that trains are spending more hours in the terminals waiting for a train and / or power to provide movement. Dwell times have risen from the normal 24-25 hours to up over 30 and as high as 34 hours in recent months.

Farm producers are watching their basis continue to rise and the elevators are becoming less inclined to accept future contracts as the uncertainty of rail movements continue to increase.

National organization such as the U.S. Wheat Associates and state Directors of Agriculture are becoming concern about the world reputation for reliable wheat supply becoming tarnished by the uncertainty of rail movements.

Some growers are openly questioning whether the railroads will be able to move the 2013 harvest out of the system BEFORE the 2014 harvest starts hitting the bins. Many farm producers are also stating that the financial institutions are also getting jumpy about whether the current harvest can be sold at reasonable prices.