



**Summary of Teleconference Meeting
Between the National Grain and Feed Association
(NGFA) and Surface Transportation Board (STB) Chairman
Ann Begeman on Final Offer Rate Review (FORR) (EP 755)**

July 8, 2020

STB Attendees:

- Ann Begeman, Chairman
- Craig Keats, General Counsel
- Bill Brennan, Director of the Office of Economics
- Kim Hillenbrand, Transportation Industry Analyst
- Chris Diamond, Attorney-Advisor
- Adam Kress, Attorney-Advisor
- Amanda Gorski, Attorney-Advisor
- Valerie Quinn, Attorney-Advisor

NGFA Attendees:

- Gary Devlin, Senior Director, Transportation, Ag Processing Inc., Omaha, NE
- Randy Gordon, NGFA President and CEO
- Tom Wilcox, NGFA Transportation Counsel and Partner, GKG Law, PC, Washington, DC

NGFA opened the discussion by commending the Board for issuing the final offer rate review (FORR) proposed rule and indicating its continued strong support for the Agency finalizing the proposed rule as soon as practicable. NGFA reiterated the importance to agricultural shippers of the Board implementing a rate-challenge procedure that is accessible, streamlined, timely and cost-effective – features that are inherent in FORR – given the changing origin-destination pairs and market supply/demand fluctuations that characterize agricultural markets. NGFA also briefly reviewed the aspects of FORR that it found most appealing to grain and agricultural shippers, and noted that it had made several suggestions for possible improvements to the proposed rule in its Opening and Reply Comments.

Chairman Begeman then inquired about NGFA's views on the possibility of utilizing a voluntary arbitration system to adjudicate freight rate complaints, and on the features such a system would need to have to be acceptable to agricultural shippers.

NGFA stated that it believed strongly that both an FORR and an arbitration-based approach had merit and could and should operate side-by-side to provide shippers with recourse to challenge rates they deem unreasonable and noncompetitive. NGFA said it believed it should not be an "either/or" choice, and that there was a need for both FORR and a truly accessible and workable arbitration approach. In addition, NGFA noted the importance of the Board finalizing the proposed streamlined market dominance test and providing guidance on the definition of long-term revenue-adequacy.

Chairman Begeman asked NGFA about its existing Rail Arbitration System, including how many cases are arbitrated each year and what level of detail is included in the arbitrator's decisions. NGFA noted that shippers and carriers can arbitrate rate disputes under its current Rail Arbitration System, but that doing so is not mandatory and both parties would need to agree to do so. NGFA said no rate arbitrations have been brought before NGFA. Further, it said it had approached several of the Class I railroads over the past five years or longer to explore creating compulsory rate arbitration within NGFA's system, and that only the BNSF Railway has been receptive to even discussing the possibility.

NGFA also described the procedures and transparency that are inherent features of its Rail Arbitration System, which has been in existence since 1998 and includes the publication of decisions that outline the case; the award made (if any); a description of the reasoning arbitrators used in reaching their decision, and the names of the arbitrators (which fosters accountability).

NGFA also discussed the statutory authority and solid legal grounds it believes the Board has to implement FORR.

The meeting concluded with the NGFA offering to provide a summary of the rail arbitration cases that have been considered under its system, as well as samples of several of the decisions rendered.