

300975

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
August 12, 2020
Part of
Public Record

Docket No. EP 755

FINAL OFFER RATE REVIEW

U.S. WHEAT TRANSPORTATION WORKING GROUP RESPONSE COMMENTS

The U.S. Wheat Transportation Working Group (“TWG”) respectfully submits its comments in response to the memoranda filed in the above-referenced proceeding as described in the Surface Transportation Board (“STB” or “Board”) decision on May 14, 2020. This decision permitted informal discussions between the STB Members and stakeholders, thereby waiving the general prohibition on ex parte communications between June 1, 2020, and July 15, 2020. The TWG sincerely thanks the Board for the opportunity to take part in these meetings.

BACKGROUND

On September 12, 2019, the Board issued a notice of proposed rulemaking (“NPRM”) in this docket seeking public comment on its proposal of a new procedure for challenging the reasonableness of railroad rates in smaller cases. Under this proposed procedure, known as Final Offer Rate Review (“FORR”), the Board would decide a case by selecting either the

complainant's or the defendant's final offer, subject to an expedited procedural schedule that adheres to firm deadlines. The procedural schedule set forth in the NPRM concluded with the expiration of the reply comment period on January 10, 2020. The Board stated that it would benefit from additional stakeholder input on the proposal specifically and on how best to continue its efforts to establish a new methodology generally, and therefore exercised its discretion to waive its general prohibition on ex parte communications to permit post-comment period ex parte discussions with stakeholders. The TWG participated in three meetings with the Board Members and submitted memoranda as required for those discussions. In said decision, the Board also permitted comments in response to the memoranda filed by stakeholders who participated in these meetings to be filed by August 12.

THE TWG RAIL RATES CONCERNS

Wheat rail tariff rates have climbed substantially over the last decade, irrespective of other factors including railroads' variable costs and farm gate prices. For example, according to the U.S. Department of Agriculture ("USDA"), between 2010 and 2018, the average BNSF shuttle train rate for wheat shipped from Wichita, KS to Galveston, TX, a major export terminal, increased 48% to \$4,244 per car. This translates to a total shuttle train revenue of \$466,831. Meanwhile, BNSF's total variable cost over the same period, according to STB data, only increased 19% to \$144,466. In 2018, the average revenue to variable cost (R/VC) ratio for this haul was 323%.

Moreover, according to USDA, between 2010 and 2018, the average UP shuttle train rate for wheat shipped from Colby, KS to Galveston, TX increased 36% to \$4,816 per car. This translates to a total shuttle train revenue of \$529,760. Meanwhile, UP's total variable cost over the same period, according to STB data, only increased 15% to \$208,751. In 2018, the average R/VC ratio for this haul was 212%.

In addition, according to USDA, between 2010 and 2018, the average BNSF shuttle train rate for wheat shipped from Grand Forks, ND to Portland, OR, another major export terminal, increased 38% to \$5,663 per car. This translates to a total shuttle train revenue of \$622,939. Meanwhile, BNSF's total variable cost over the same period, according to STB data, only increased 20% to \$293,205. In 2018, the average R/VC ratio for this haul was 254%.

Wheat rates are not only high, having increased substantially over time, but are significantly higher than other, similar agricultural commodities shipped on the same route. According to rates provided by grain handlers across the country in early July 2020, it is 22% more expensive to ship wheat than corn from south central Kansas to the Texas Gulf at \$4,423 per car. It is 36% more expensive to ship wheat than corn from eastern Colorado to the Texas Gulf at \$5,217 per car. It is 38% more expensive to ship wheat than corn from eastern Nebraska to the Center Gulf at \$5,577 per car. And it is 39% more expensive to ship wheat than corn from eastern North Dakota to Portland, OR at \$5,144 per car.

These high rail rates paid by wheat shippers make up a significant portion of U.S. wheat export prices which makes it difficult for the U.S. to compete with other global competitors in the world wheat market. According to a 2017 study conducted by USDA, "[w]heat shippers in

particular have found it difficult to compete in export markets, as they face higher rail rates than other grain shippers over similar corridors and rates that have not declined in response to changes in world wheat markets.”

According to data provided by the North Dakota Wheat Commission (NDWC) in 2019, it is significantly more expensive to ship U.S. wheat by rail to export terminals across the Northern Plains than it is to ship wheat from similar origin points in Canada, a major global wheat export competitor. From north central North Dakota to west coast export terminals, it is 41% more expensive to ship wheat than from south central Saskatoon, Canada at \$5,981 per car compared to \$4,243 per car on the Canadian side. From the same origin points, it is 45% more expensive to ship wheat to Great Lakes export terminals on the U.S. side at \$3,880 per car compared to \$2,668 per car in Canada.

High rail rates for wheat also impact farmer profitability. Rail freight tariffs are one of the largest factors impacting local wheat basis values, making wheat less profitable for farmers as a portion of the cost to ship wheat is always passed down to the farm gate level. As noted above, between 2010 and 2018, according to USDA, the cost to ship wheat from Grand Forks, ND to Portland, OR increased 38% to \$5,663 per car. According to additional data provided by the NDWC, between 2010 and 2020, local basis, the difference between the futures price and the farm gate price, widened 140% to negative 60 cents. This means farmers receive wheat prices 60 cents under the current futures price in 2020, compared to 25 cents under the futures price in 2010.

Despite these aforementioned salient points that wheat rail tariffs are increasing significantly over time, are higher than other agricultural commodities shipped over the same routes, impact the United States' ability to compete on a global scale and negatively affect farmer profitability, wheat shippers do not have an effective, affordable, timely mechanism in place to challenge unreasonable rail rates. In fact, no shipper of agricultural commodities has filed a formal rate case with the STB in nearly 40 years. Despite rail rates being a major factor in U.S. wheat's export competitiveness, current rate case procedures are unable to provide any recourse for agricultural shippers.

As the dearth of agricultural rail rate cases demonstrates, it is extremely difficult for wheat shippers to use the STB's three current rate methodologies—each of which is too complex, time-consuming, costly and unfeasible for agricultural shippers. The TWG believes creative, timely, cost-effective and efficient regulatory reform is needed to review and challenge unreasonable rail rates to the benefit of our overseas customers and U.S. farmers alike.

THE TWG SUPPORTS FORR

The TWG supports the STB's FORR proposal and encourages the Board to increase the \$4 million cap in its final rule. A higher cap could allow agricultural shippers using the same rail route to partner in a case, reducing costs and risk for the filing parties.

Also, a key feature of the FORR as currently drafted is the relatively short time period for proceedings. Global agricultural market dynamics change constantly, along with the origins and destinations of bulk grain commodities. Being able to seek relief quickly would be beneficial to wheat shippers who are constantly reacting to the global wheat market.

RAILROADS ARBITRATION PROPOSAL

The TWG has several concerns about the railroads' recent petition for a rulemaking for rail rate arbitration which generally follows the FORR proposal. The TWG is especially worried about BNSF not being a part of it. BNSF is a major rail provider for wheat shippers. This absence creates serious concerns for the TWG as the arbitration proposal is an either/or proposition, meaning the signatory rails would not support arbitration if FORR is adopted. Moreover, because arbitration is voluntary, BNSF would not have to participate even though the signatory railroads would commit to taking part in the process. Accordingly, the TWG has serious concerns about how the absence of BNSF (and Canadian Pacific) from arbitration would be handled. This dilemma must be resolved for the arbitration proposal to have any semblance of fairness.

Moreover, the TWG is concerned that this rate arbitration proposal is simply a tactic by the railroads to avoid an increase in the \$4 million cap. If voluntary arbitration is chosen as proposed by these railroads, any increase in the cap under that system would result in these railroads pulling out of the process. If FORR is put in place with a higher cap, the railroads could not opt out because the process would be mandatory.

CONCLUSION

The TWG thanks the STB for the hard work it has done through the Rate Reform Task Force and this FORR procedure which could offer streamlined, timelier, less cumbersome and less prohibitively expensive ways for wheat shippers to formally challenge high rail rates. The TWG

supports the FORR rulemaking proposal and believes it could finally give wheat shippers the opportunity to challenge railroads on ever-increasing and comparatively higher wheat rates.

Respectfully submitted,

/s/ Daniel R. Elliott
Daniel Elliott PLLC
2000 Pennsylvania Avenue, NW
Suite 7000
Washington, DC 20006
(703) 863-9670

Attorney for U.S. Wheat Associates

August 12, 2020