

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

303254

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DOCKET NO. EP 765

**JOINT PETITION FOR RULEMAKING TO ESTABLISH AN ALTERNATIVE
VOLUNTARY ARBITRATION PROGRAM FOR SMALL RAIL RATE DISPUTES**

**REPLY IN SUPPORT OF MOTION TO HOLD
PROCEDURAL SCHEDULE IN ABEYANCE**

The National Grain and Feed Association ("NGFA") hereby submits this reply in support of the Motion to Hold Procedural Schedule in Abeyance ("Motion") filed by the American Chemistry Council, National Industrial Transportation League, The Chlorine Institute, and The Fertilizer Institute (collectively "Joint Shippers"). The Motion asks the Surface Transportation Board ("Board") to hold the procedural schedule of this proceeding in abeyance until the Joint Petitioners state whether they would agree to arbitrate cases that reviewed the reasonableness of a railroad's rates using evidence of revenue adequacy and/or any methodologies that use a revenue adequacy constraint. As grounds for this reply in support, the NGFA states as follows.

A. Identity and Interest of The National Grain and Feed Association

The NGFA, established in 1896, consists of more than 1,000 grain, feed, processing, exporting and other grain-related companies operating more than 8,000 facilities handling the large majority of the U.S. grains and oilseeds used for domestic and export purposes annually. Its membership includes private companies and farmer owned cooperatives, including grain elevators; feed and feed ingredient manufacturers; biofuels companies; grain and oilseed

processors and millers; exporters; livestock and poultry integrators; transportation companies; and associated firms that provide goods and services to the nation's grain, feed, and processing industry.

B. Argument

The NGFA has been an active participant in this proceeding to date, and it intends continue to allocate resources and time to prepare opening and reply comments in response to the Notice of Proposed Rulemaking ("NPRM") served in this Docket on November 15, 2021. NGFA agrees with Joint Petitioners that throughout the process that culminated in the Joint Petition being filed on July 31, 2021, and in the Joint Petition and Petitioners' Supplemental Pleading, the Joint Petitioners have flatly asserted that they will not consent to participate in arbitrations that review the reasonableness of a railroad rate utilizing "a system-wide revenue adequacy constraint." They have also adamantly stated that any evidence about system-wide revenue adequacy (or inadequacy) would be inadmissible for rate reasonableness in an arbitration.¹

NGFA concurs with the Joint Shippers that stakeholders and the Board need to know now if the Joint Petitioners are going to continue to insist on this "Necessary Precondition[]" to Petitioners' Consent to Arbitrate for 5 years"² before the Board and stakeholders such as NGFA expend additional resources and time preparing opening comments and participating further in the NPRM proceeding. If the Joint Petitioners are going to maintain this position, then this proceeding should be terminated and the Board and stakeholders should turn their focus to finalizing the regulations proposed in Docket No. EP 755, *Final Offer Rate Review* (served November 15, 2021).

¹ See, e.g. Joint Petition at 14-15; Joint Shippers' Motion at 2, Footnote 3.

² Joint Petition at 25.

For the foregoing reasons the NGFA supports the Board's expeditious consideration of Joint Shippers' Motion.

Respectfully submitted,



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December 1, 2021

CERTIFICATE OF SERVICE

I hereby certify that, on this 1st day of December, 2021, a copy of the foregoing Reply in Support of Motion to Hold Procedural Schedule in Abeyance was served by email on all parties on the official Service List for Docket No. EP 765.

/ss/ Thomas W. Wilcox