



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 770

URGENT ISSUES IN FREIGHT RAIL SERVICE

COMMENTS OF
THE FERTILIZER INSTITUTE

Pursuant to the Surface Transportation Board (“STB” or “Board”) notice served on April 7, 2022, The Fertilizer Institute (“TFI”) hereby submits comments on “*Urgent Issues in Freight Rail Service*.” TFI appreciates the opportunity to engage with the Board on this important matter.

Statement of Interest

TFI represents companies that are engaged in all aspects of the fertilizer supply chain in the United States. Half of all food grown around the world is made possible through the use of fertilizer, hence its importance to farmers and food production.¹

The U.S. fertilizer industry generates more than \$130 billion in economic benefit each year and supports approximately 487,000 American jobs.

Nearly 44% of all fertilizers produced globally, or more than 200 million tons of material, are exported annually. Moving this material from production facilities to farms requires virtually every mode of transportation and a carefully orchestrated system of logistics to serve farmers on a just-in-time basis. Over half of all fertilizer moves by rail year-round throughout the United States.

Freight Rail Service and Structure

Regarding rail service, severe rail service disruptions are well known and documented over the past five years ([USDA](#), [NGFA](#), [TFI](#)).

In general, rail carrier cycle times amongst all or most Class I carriers have been substantially slower in the first quarter of this year. TFI attributes the erosion of cycle times to implementation of precision scheduled railroading (“PSR”), which has had several consequences, including eliminating too much rail carrier personnel, idling of locomotives, and closures of service yards, all of which has compromised rail carrier operational elasticity and the ability to handle unexpected issues such as sudden weather and the COVID pandemic.

¹ Stewart, W.M., Dibb, D.W., Johnston, A.E. and Smyth, T.J. (2005). “[The Contribution of Commercial Fertilizer Nutrients to Food Production](#).” *Agron. J.*, 97: 1-6.

Poor cycle times and service has resulted in costly, inefficient utilization of shipper assets. This has negatively affected the ability of TFI's members to ship fertilizer and pre-position this essential product for the busy Spring planting season. When rail service deteriorates -- which is increasingly common -- shippers often do not have enough cars to ship the product volumes that need to move. This forces shippers and producers to curtail production and raises costs on everyone, except for the rail industry.

The timeliness and reliability of fertilizer shipments is important year-round, but it is crucial during the Spring season because farmers need to apply it in a very narrow 3-to-5-week window. Once the window closes, it remains closed until the next season. If farmers do not receive fertilizer, it results in lower crop yields, higher food prices, and more inflation.

Beyond inflation and following Russia's invasion of Ukraine, the world is now facing worsening food supply issues. It is more important than ever that America's farmers get fertilizer to support strong crop yields.

As one example of what TFI members are facing -- to meet customer needs for this Spring planting season -- one fertilizer shipper may have to pay over \$800,000 in additional freight costs because of poor service on just one rail carrier.

Also happening just this month, rather than working with their customers to find solutions, one rail carrier chose to unilaterally pick a bunch of customers and told them to curtail their shipments. Because it is the Spring planting season, this behavior further increases the chances that several fertilizer users will miss their application windows. While TFI strongly disputes this behavior, at least the carrier communicated its intentions. It is entirely possible that carriers could just stop showing up and this would be devastating to fertilizer deliveries and our nation's food production.

TFI has no objections to rail carriers being profitable², but it is outrageous to see carriers shipping lower volumes while making record profits and while not addressing their atrocious service. The letter submitted for the record by a rail carrier engineer from Idaho seems to indicate that railroad management treats its employees like it treats its customers.

Rail Sector Structure

The following structural elements of the rail sector are worth noting.

Rail Competition and Capital

The rail sector, as carriers are apt to highlight, is capital intensive. The barriers to entry are prohibitively high, such that the current Class I carriers will never experience competition from a new market entrant. Railroads enjoy substantial power to dictate rail pricing and service levels. Moreover, motor carriers are unable to compete with rail carriers on long-haul routes. That said, there are extreme situations where TFI members are forced to ship by truck due to unreasonably high rates and/or poor rail service. For example, in the past 20 years, rail rates for

² [*"Railroads are USA's most profitable industry with a 50% profit margin."*](#) American Journal of Transportation. Oct. 22, 2019.

one fertilizer product increased 206%, which is more than triple the average increase for all commodities combined.

Freight Car Ownership

Since 1985, rail carriers have pushed shippers to take on ownership responsibilities for the freight cars used to transport commodities. Private rail freight cars are now approximately 73% owned, leased, and maintained by shippers.³ In 1985, only 30% of rail cars were owned, leased, and maintained by shippers.⁴ This shift disincentivizes railroads from efficiently utilizing these shipper assets.⁵

General Comments

In reference to rail competition and freight car ownership, the rail industry is not customer focused because it has little structural and market-based incentives to do so. We cannot change the fact that the industry is capital intensive and thus rail carriers do not have to be concerned about competition from potential new entrants, which would help incentivize better rates and service. The following market-based incentives are needed.

Freight Rail Service Reform and Modernization

Enhance Rail-to-Rail Competition

TFI greatly appreciates the Board's focus on a number of efforts to reform its outdated oversight mechanisms, including long-pending updates for reciprocal switching.⁶ Reciprocal switching is an important way to promote more competition in the rail industry and more closely reflect the system in Canada that already allows Reciprocal Switching.⁷ Recognizing that the Board has a very full docket, it is critical that the Board finalize the Reciprocal Switching rulemaking as soon as possible.

Reciprocity

As rail carriers divested themselves from rail car ownership, they have also divested themselves out of the inherent incentives that encourage the efficient use of rail cars.⁸ This is a significant cost for shippers and there are little to no statutory nor regulatory remedies for it.

While demurrage and accessorial charges are increasingly levied on shippers, there is almost no accountability for the railroad's inefficient use of shipper assets – most notably private rail cars. TFI recognizes the role that appropriate and fair demurrage charges have on rail network fluidity. Reciprocity is also needed. TFI urges consideration of all regulatory and statutory changes that would enforce the same principal on railroads. One pragmatic idea would be to allow shippers to charge railroads for each

³ "[Petition for Rulemaking to Adopt Rules Governing Private Railcar Use by Railroads](#)." Docket No. EP 768, Surface Transportation Board.

⁴ Roman, Jay. "[STB's Annual Rail Rate Index Study: A Deeper Dive](#)." Railway Age. January 27, 2022.

⁵ 100% of tank cars are owned, leased, and maintained by shippers.

⁶ [Does the AAR Fear Competition?](#) Railway Age, March 2, 2022.

⁷ Known in Canada as Interswitching.

⁸ As previously cited, shippers own or lease 73% of the cars that are used to ship commodities.

time they miss a switch and for each day a carrier is late to pick up or deliver a car.

Emergency Service Orders

TFI greatly appreciates the Board's recent action to update its regulations on emergency service orders. TFI strongly supports the proposed modifications, which reflect many of our suggestions offered to the Board's Task Force a few years ago. We look forward to further engagement on this matter.

As will be evident throughout this hearing, serious rail service problems exist on all the carriers' networks. As such, updating emergency service orders is very important, but we have a current situation where shippers would be jumping from one service disaster to another. That is why TFI also stresses reciprocity to hold railroads accountable for the damages caused by their own self-inflicted service failures.

Conclusion

Freight rail service reform is critical to U.S. manufacturers and farmers. Especially following PSR, too many locomotives have been idled and service yards closed while rail carriers no longer seem to have enough staff to consistently fulfill their obligations to shippers.

Thank you again for holding this hearing on "*Urgent Issues in Freight Rail Service*" and for the opportunity to submit this statement.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin Louchheim". The signature is fluid and cursive, with the first name "Justin" being more prominent than the last name "Louchheim".

Justin Louchheim
Senior Director of Government Affairs
The Fertilizer Institute