

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

304814

ENTERED
Office of Proceedings
June 22, 2022
Part of
Public Record

Docket No. FD 36609

**FOSTER POULTRY FARMS – *EX PARTE* APPLICATION
FOR EMERGENCY SERVICE ORDER**

**RESPONSE TO UNION PACIFIC RAILROAD COMPANY’S
REPLY TO FOSTER POULTRY FARMS’
PETITION FOR EMERGENCY SERVICE ORDER**

As directed by the Decision issued in this proceeding on June 17, 2022 (“ESO Decision”) Foster Poultry Farms (“Foster Farms”) hereby files this response to Union Pacific Railroad Company’s (“UP”) Reply to Foster Farms’ *Ex Parte* Petition for Emergency Service Order (“*Ex Parte* Petition”). Foster Farms is greatly appreciative of the Surface Transportation Board’s (“Board” or “STB”) prompt attention to this serious matter and its finding that issuing an Emergency Service Order was appropriate in these circumstances. The events that have transpired since the ESO Decision confirm that the Board must continue to retain jurisdiction over this matter and UP’s attempts to resume providing adequate and regular service to Foster Farms’ Traver and Turlock feed processing facilities.

I. Update of Relevant Facts¹

As of Friday, June 17, both the Traver and Turlock facilities were out of corn supplies and each had cut off supplying feed to dairy cattle. As such, none of 121 scheduled “loads” (one load

¹ As with the *Ex Parte* Petition, the facts set forth in this Response are verified by Mr. Phil Greene of Foster Farms.

is approximately 25 tons, or the equivalent of 893 bushels of corn) of feed were shipped to external dairy cattle customers. Only Foster Farms' chickens were being fed, and that was only because Foster Farms had to pay to truck 50,000 bushels of corn from a competitor in order to accomplish this scaled back operation. It was therefore absolutely critical that UP deliver unit trains of corn over the past weekend of June 17, 18 and June 19. In UP's Reply, which was filed on June 16, it represented that UP would deliver three of Foster Farms' unit trains over the weekend: Train F11 on June 17; Train F14 on June 18; and Train F12 on June 19.² However, only F14 was delivered as scheduled on June 18. According to UP's revised schedule provided to Foster Farms, F11 is now scheduled to arrive on June 22, and F12 is now scheduled to be delivered on June 25. UP's Reply stated that Train F15 would arrive in the afternoon of June 21 and it did in fact arrive at approximately 3:00 PM Pacific Time on that date.

This means that, despite the presence of the Emergency Service Order, UP only managed to deliver a single unit train of corn to the Traver and Turlock facilities between June 17 and June 20. In the ESO Decision the Board stated "[s]hould UP need to deviate from its proposed schedule for those trains, UP should advise the Board and Foster Farms in writing as soon as it is able."³ Although UP filed certain materials over the weekend showing the deviations from the schedules set out in the Moore V.S., UP did not provide an explanation for why it did not meet the stated schedules for Trains F11 and F12.⁴

² Verified Statement of Bradley S. Moore ("Moore V.S.") at 1-2. ESO Decision at 3.

³ ESO Decision at 2.

⁴ Foster Farms notes that UP designated its submissions as "Highly Confidential," although it acknowledged in email correspondence with Foster Farms and STB staff over the past weekend that this designation did not preclude Foster Farms employees and in-house counsel from seeing the information contained therein, which Foster Farms receives from UP in the normal course anyway. Out of an abundance of caution Foster Farms will not directly quote the materials UP has submitted but it will state that at no time has Foster Farms requested that that a loaded unit train on its way to the Traver or Turlock facility be diverted. Rather, any references to diversions refer to instances where UP changes the schedule it issues for a particular unit train and Foster Farms

The delivery of only one unit train over the weekend meant that only 30 of 75 loads scheduled for June 18 and June 19 were shipped to Foster Farms' customers from the Traver facility, and no loads were shipped from the Turlock facility on these dates. Nor were any loads shipped from Turlock on June 20, when 46 loads were scheduled. To achieve the limited level of service to its customers it provided, Foster Farms had to purchase eleven loads of rolled corn from two of its competitors that was trucked into the two facilities. In summary, the delivery of only one unit train out of the three UP represented would arrive over the weekend meant that Foster Farms was forced to feed only its chickens to ensure their survival, and it could not supply feed to the owners of tens of thousands of dairy cattle which depend on Foster Farms for their feed supply.

As stated, Train F15 arrived as scheduled on the afternoon of June 21. That enabled Foster Farms to ship 23 loads to its dairy cattle customers and to resume distributing feed to other chicken growers. This week, Foster Farms anticipates the delivery of four additional loaded unit trains between June 22 and June 25.⁵

II. The Board Must Continue the Emergency Service Order for at Least 30 Days

In UP's Reply it states, "Union Pacific has made several service plan adjustments that should directly result in improvements to Foster Farms service."⁶ Although the service did not improve over the past weekend and UP has not explained why, the adjustments UP has listed in its Reply are consistent with Foster Farms' view of the main reasons for UP's service failures: the lack of sufficient crews and locomotives at origin loading locations and destination facilities.

has to adjust its expectations and plan accordingly.

⁵ In addition to its two other unit trains, Foster Farms had previously purchased two unit trains from other parties at great cost.

⁶ Moore V.S. at 2.

If the unit train deliveries scheduled for June 22 to June 25 come to pass, then the Traver and Turlock facilities will be out of the emergency situation they are in today. For this, Foster Farms will give UP credit and, to be clear, Foster Farms is not asserting that over this past weekend UP fell short of the STB’s directive to try to meet the schedules in its Reply “to the greatest extent possible.”⁷ However, the issue since February of this year has been, and will continue to be for the indefinite future, whether UP can sustain service over a sufficient amount of time for Foster Farms to build up its storage and to alleviate the necessity of Foster Farms to expend its resources and incur the additional costs of scrambling to find corn from alternative sources and transportation modes to meet its contractual obligations to customers and otherwise mitigate the harm caused by UP’s service failures. For example, Foster Farms notes that, while Mr. Moore states UP is hiring 34 new employees for its Roseville, CA hub, these employees will not be available for service until August 15, 2022.⁸ This means this action will do nothing to prevent UP service lapses between now and then.

Foster Farms therefore maintains that the STB should retain jurisdiction over this matter for at least the 30 days permitted by 49 U.S.C. §11123, and that UP should provide written notice to Foster Farms and the STB of any deviations to the schedules it provides Foster Farms, along with an explanation of why UP is not able to meet the stated schedule. Over the 30-day period the Board should also require UP to keep Foster Farms and the Board apprised of UP’s execution of the six “commitments” listed in UP’s Reply and the “Service Plan Adjustments” listed in the Verified Statement of Mr. Moore.

⁷ ESO Decision at 2.

⁸ Moore V.S. at 2.

III. Conclusion

In conclusion, Foster Farms has no expectation or desire for the Board to continue to exercise its emergency service authority in this matter for any reason other than to help restore UP's service to the Traver and Turlock facilities to levels that permit Foster Farms to reasonably meet its obligations to produce feed for its livestock and the livestock of its customers on a consistent basis. Foster Farms believes that the Board maintaining jurisdiction and oversight regarding UP's performance and execution of the commitments and Service Plan Adjustments in its Reply for the 30-day period contemplated by §11123 could result in the achievement of this goal.

Respectfully submitted,



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Attorney for Foster Poultry Farms

June 22, 2022

VERIFICATION

I, Phil Greene, Vice President of Foster Poultry Farms, declare under penalty of perjury that the facts set forth in the foregoing Response to Union Pacific Railroad's Reply to *Ex Parte* Petition for Emergency Service Order are true and correct. Further, I certify that I am qualified and authorized to execute this verification on behalf of Foster Farms Poultry.

Executed: June 22, 2022

A handwritten signature in blue ink, appearing to read "Phil Greene", written over a horizontal line.

Phil Greene

CERTIFICATE OF SERVICE

I hereby certify that on this 22th day of June 2022, I served a copy of the foregoing Response to Union Pacific Railroad Company's Reply to *Ex Parte* Petition for Emergency Service Order by electronic mail upon the Chief Legal Officer for Union Pacific Railroad Company, as follows:

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