

ENTERED
Office of Proceedings
July 15, 2022
Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36609

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

**UNION PACIFIC RAILROAD COMPANY’S OPPOSITION
TO MOTION TO EXTEND EMERGENCY SERVICE ORDER**

CRAIG V. RICHARDSON
JAMES B. BOLES
TONYA W. CONLEY
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
(402) 544-5543

MICHAEL L. ROSENTHAL
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, D.C. 20001
(202) 662-6000

Attorneys for Union Pacific Railroad Company

July 15, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36609

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

**UNION PACIFIC RAILROAD COMPANY’S OPPOSITION
TO MOTION TO EXTEND EMERGENCY SERVICE ORDER**

Union Pacific Railroad Company opposes the motion of Foster Poultry Farms to extend the emergency service order issued by the Board on June 17, 2022. The Board issued the order to address an emergency situation at Foster Farms’ facilities in Traver and Turlock, California. Emergency service orders may remain in place *only* “for a period not to exceed 30 days” *unless* the Board “finds that a transportation emergency . . . continues to exist.” 49 U.S.C. § 11123(a), (c). Foster Farms’ motion confirms no transportation emergency continues to exist. It reports that “the corn stocks at the Traver and Turlock facilities are replenished Additional unit trains are no longer needed to replenish stocks and keep the facilities supplied with corn.” Motion at 3. Foster Farms does not offer any lawful basis for extending the order.

The circumstances that justified the Board’s decision to issue an emergency order no longer exist. As of July 1, 2022, Foster Farms’ inability to feed its chickens and supply feed for livestock already “had been mitigated.” Decision served July 2, 2022, at 3. But the Board kept the order in place because “Foster Farms’ stocks [were] still not fully replenished.” *Id.* Now, as Foster Farms acknowledges, those stocks “are replenished.” Motion at 3. In fact, Union Pacific is delivering more grain than Foster Farms can even handle at Traver and Turlock. As shown in Union Pacific’s daily reports to the Board, Foster Farms instructed Union Pacific to divert three

of its eleven most recent loaded shuttles to other locations because the Traver and Turlock facilities were full. Another loaded shuttle ended up being parked at Turlock for 9 days because the facility lacked capacity to unload the train. Union Pacific has addressed the emergency.

Union Pacific regrets that conditions deteriorated to the point that Foster Farms sought relief from the Board back in June. However, by its own reckoning, Foster Farms no longer faces an emergency. No justification exists for extending the emergency order beyond its scheduled expiration date.¹ Union Pacific recognizes its responsibility to continue providing adequate service to Foster Farms, but it has responsibilities to serve thousands of other customers as well.

Respectfully submitted,

CRAIG V. RICHARDSON
JAMES B. BOLES
TONYA W. CONLEY
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
(402) 544-5543

/s/ Michael L. Rosenthal
MICHAEL L. ROSENTHAL
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, D.C. 20001
(202) 662-6000

Attorneys for Union Pacific Railroad Company

July 15, 2022

¹ If Foster Farms has service concerns at some future point and is not satisfied with the response it receives from Union Pacific, it can always seek assistance through the Board's RCPA Program. Union Pacific commits to participating constructively in any such informal process.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July 2022, I caused a copy of the foregoing document to be served by electronic mail on all parties of record in STB Docket No. FD 36609.

/s/ Michael L. Rosenthal