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SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 772

OVERSIGHT HEARING PERTAINING TO UNION PACAFIC
RAILROAD COMPANY'S EMBARGOES

**COMMENTS OF
THE FERTILIZER INSTITUTE**

Good morning and thank you, Chairman Oberman and Members of Board, for holding this hearing on UP's embargoes.

I am here today on behalf of The Fertilizer Institute (TFI). 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 by fertilizer, hence its importance to farmers and food production. And over half of all fertilizer moves by rail, hence the importance of competitive and reasonable rail transportation to our food supply.

Rail Service and Staffing

Shippers continue to face a drastic deterioration of rail service. Rail service during calendar year 2022 has perhaps been the worst in history.

This chronic service decline began as railroads implemented so-called Precision Scheduled Railroading (PSR), which began long before the COVID-19 pandemic. This involved carriers cutting their workforce and reducing equipment. When the COVID-19 pandemic hit, carriers made additional and drastic employee reductions. From what TFI can see, carriers' staffing decisions have prevented them from providing a reasonable level of rail service and making reasonable adjustments to address demand changes and service challenges inherent in railroading. The disturbing decline in rail service since railroads implemented PSR should serve as a wake-up call for railroads that they need to adopt staffing models

that allow them to handle fluctuations in shipping volumes and to provide some elasticity in their general operations.

Today's hearing focuses on one carrier, Union Pacific, a PSR adopter that has used embargoes to manage congestion on its rail network. Using embargoes to manage congestion arising from staffing and management decisions is an unacceptable practice that allows railroads to pursue lean staffing models and other measures that favor their operating ratios over the public interest in adequate rail service, which is embodied in the common carrier obligation. The Board should examine Union Pacific's embargo practice closely to ensure that Union Pacific is not using embargoes improperly, including to pursue lean operating models that impair its ability to satisfy its common carrier obligation.

UP Embargoes

TFI acknowledges that the UP network is currently struggling and some action that restricts activity on its network could be required to improve fluidity. The immediate question is whether UP's actions are reasonable under the circumstances and whether it is imposing embargoes on a fair and equitable basis.

In April of this year, which is the middle of the Spring planting season, UP imposed or threatened embargoes on many TFI members.

The timeliness of fertilizer shipments is particularly sensitive during the Spring. TFI came within an hour of filing an emergency petition, but our members were able to individually work out better – not great – arrangements with UP. TFI appreciates that UP has been willing at times – often with a great deal of prodding – to work with TFI's members.

The current embargoes are occurring in the middle of the Fall application season. These embargoes are disruptive, but not quite as potentially catastrophic as the Spring embargoes. UP's implementation of these embargoes is concerning for several reasons. As many TFI members have reported, the data underpinning UP's actions are generally bad, UP's communications with its customers about its embargoes has been poor, and UP has failed to set clear expectations or a timeline for when things might go back to "normal." In many cases, what UP is even asking shippers to do and the methodology UP is using to make its embargo decisions is

unclear. As a result, customers are left to guess at what traffic UP will handle, and they have no meaningful ability to help UP address its congestion nor to make appropriate business plans. And this includes those who are not even embargoed. Data and communication have been quite bad for everyone.

As mentioned, fertilizer is a critical precursor to food supply. Due to various geopolitical events, fertilizer markets have been highly challenged in recent years. To help American farmers, TFI has been working closely with the Administration and Congress regarding domestic fertilizer production, and the Administration has a \$500 million dollar grant program to promote domestic fertilizer production.

An unreliable transportation network is highly detrimental to domestic fertilizer production. UP's embargoes are contributing to lost business and increased costs which will directly and negatively impact domestic fertilizer production and cost. The embargoes also place an enormous burden on fertilizer shippers who have regular seasonal fluctuations in their business to support the ag market ahead of and through Spring and Fall application seasons. To remain operational, many production facilities need consistent rail service for inbound raw materials and outbound finished product. While facilities have been able to keep running while faced with UP's embargoes, these embargoes force our members to make costly decisions to minimize the impact on their own customers, which is necessary in competitive business environments. As such, when possible, TFI members will shift their business to other carriers or transportation sectors, but capacity is constrained everywhere.

UP should have planned for much of the volume that is currently on its network. The fertilizer season is predictable and consistent, and many TFI members negotiate specific business with UP. UP should be able to adequately prepare and resource for the fertilizer sector. Also, when UP's customers have to look elsewhere, it can create a cascading situation that puts unforeseen burdens onto other carriers and transportation modes.

As mentioned, TFI accepts that UP needs to take steps to reestablish network fluidity. But it cannot rely on embargoes to run its business, nor can it ask shippers with no notice to stop or severely curtail their business. UP and other rail carriers need to maintain staff and resources at a level that allows them to be more consistent throughout the year and through up and down business cycles.

The problems plaguing UP, its customers, and American consumers are largely structural. There may not be an obvious fix, but a series of fixes can help. This includes market-based competition. The more rail carriers are encouraged to keep costs down for their customers, invest in their business to move more goods, and to compete with one-another; the better off everyone will be. Moreover, it may be time for the Board and Congress to work together on ways to clarify the common carrier obligation, including the role of embargoes. Embargoes should not be available to excuse railroads from the common carrier obligation when their business decisions to pursue lower operating ratios impair their capacity to handle traffic reasonably.

Board Guidance

As we approach Springtime, this situation could become increasingly problematic for farmers who need fertilizer. We urge the Board to treat service issues impacting fertilizer supply as an emergency. This would be consistent with the general agreement that service issues threatening food supply are emergencies.

TFI also encourages the Board to consider issuing guidance stating that it will consider railroad decisions regarding staffing and equipment as a factor when determining whether an embargo is reasonable. It appears to TFI that UP's embargoes are unreasonable because they arise from its own decisions to operate with too little staff and equipment, and this guidance would discourage UP and other railroads from this embargo practice.

As we approach the Spring -- since it remains unclear when these embargoes may end and when they could begin again -- it may also be helpful to consider whether UP should articulate contingency plans to ensure the movement of fertilizer during periods of heightened congestion. This is not to imply that fertilizer is causing any network problems. The problems are rooted in UP's managerial decisions on staffing and resources. We need to ensure critical commodities get where they are needed. TFI is remiss to push for anything that might favor certain commodities; however, certain commodities such as fertilizers are essential precursors to food supply or other essential goods.

Conclusion

In conclusion, the methodology, communication, and long-range plans regarding UP's embargoes raise serious concerns. The Board should consider a guidance statement clarifying that service challenges arising from general staffing, equipment, and infrastructure decisions are not reasonable grounds for embargoes. The Board also should consider requiring UP to articulate contingency plans, should they be needed, to help ensure adequate supply of certain essential commodities like fertilizer.

Finally, anything the Board can do to promote rail competition and accountability is desperately needed.

Thank you again for your oversight and for holding this hearing on UP's embargoes.