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Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: STB Finance Docket No. 36609, *Foster Poultry Farms – Ex Parte*
Petition for Emergency Service Order

Dear Ms. Brown:

This letter is being submitted to briefly respond to the Reply filed by Union Pacific Railroad Company (“UP”) to the *Ex Parte* Petition filed yesterday by Foster Poultry Farms (“Foster Farms”). Foster Farms asks the Board to accept this letter in order to have a more complete factual record on which to render a decision.

Unlike UP’s reply to Foster Farms’ first petition for an emergency service order in June of this year, UP takes no responsibility in its Reply for its failure to serve Foster Farms, or for the current dire straits that Foster Farms and its customers are now in as a result of UP’s conduct. Instead, UP blames the weather while also inferring that Foster Farms is partially responsible for the fact that only one loaded unit train has been delivered to Foster Farms’ three facilities since December 12, 2022. This response is unfortunate, and false.

Foster Farms briefly responds to some of the factual statements made by UP.

1. UP did not deliver a total of 20 loaded trains using four trainsets dedicated to Foster Farms in October and November, as its Reply states. According to Foster Farms’ records, UP made 17 deliveries using the four trainsets. UP delivered 10 trains in October, nine of which were the four trainsets. The other train had been purchased by

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Foster Farms to try to build up feedstocks before the onset of winter weather and anticipated labor shortages during the Christmas holiday season. As for November, UP made only eight deliveries using the four trainsets. The other deliveries were of unit trains Foster Farms acquired to make up for UP's slowdown. Foster Farms therefore strongly disputes the assertion that UP managed 2.5 turns per month in the four trainsets.

2. The statement that Foster Farms "only acquired two dedicated trainsets" with its accompanying inferences leaves out the fact that UP is the entity that leases the trainsets, and that UP did not lease two trainsets to Foster Farms again despite it offering above market prices to acquire them. This forced Foster Farms to acquire additional trainsets from other parties in order to have a sufficient number to serve its facilities.
3. UP's statement that Foster Farms had no empty trainsets to load until December 14, 2022, is disingenuous. The alleged "empty trainset gap" was not caused solely by "weather" and the timing of Foster Farms acquiring unit trains. In Foster Farms' view, any "gaps" were caused primarily by UP's operations that held empty trains in California locations, loaded trains at Midwest origins waiting for crews and locomotives, and UP holding trains in other locations on UP's system.

I certify that this letter is being served on counsel for UP by email.

Sincerely,



Thomas W. Wilcox

Attorney for Foster Poultry Farms

CC: Counsel for Union Pacific Railroad Company
Janie Sheng, Surface Transportation Board