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BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36609

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

UNION PACIFIC RAILROAD COMPANY'S STATUS UPDATE

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UNION PACIFIC RAILROAD COMPANY'S STATUS UPDATE

UP is filing this status update in accordance with the Board's Order served in this docket on December 30, 2022.

On December 30, UP responded to an *ex parte* petition for an emergency service order filed by Foster Farms by reporting that it had four loaded trains destined to Foster Farms' facilities in Traver and Turlock, California, and one destined to Foster Farms' facility in Delhi, California, and that it was projecting the trains would arrive between December 31, 2022, and January 3, 2023. As described in the accompanying verified statement of Bradley S. Moore, UP's Vice President of Customer Care and Support, Foster Farms asked UP to divert one of those trains (HS74) from Turlock to Traver, which elongated the haul, but UP delivered the train on December 31. Another train (FR11) arrived in Traver earlier today, despite delays caused by the historic weather event in Northern California. The same weather event also caused delays to two other trains UP initially projected would arrive by January 3. Those two trains (BR04 and AG04) are now expected to arrive on January 4. The fifth train UP projected would arrive by January 3 (FR12) incurred multiple delays arising from weather and other incidents along its route, and it is now expected to arrive on January 5.

As Mr. Moore describes in his statement, UP anticipates delivering a total of nine trains to Foster Farms in January—that is, five in addition to the four January deliveries

discussed above. Foster Farms has access to two reserved trains (FR11 and FR12), and one train acquired on the secondary market (CG43) is moving for loading in Iowa. UP understands Foster Farms will have use of CG43 and one other train from the secondary market in January. In the absence of weather-related events, UP anticipates that FR11 and FR12 will have time to return to the Midwest for loading and move back to California for unloading once more this month, and that each trainset from the secondary market could deliver an additional load by the end of January.

In its Order, the Board asked UP to address whether it is willing to grant or consider granting BNSF access for any period of time to serve Foster Farms directly via switch or trackage rights to avoid continued or future service disruptions. UP is always willing to consider granting other railroads temporary access to customers affected by service disruptions when such access would mitigate the impacts of the disruption without impairing service to other customers. However, as Mr. Moore explains, UP does not believe granting BNSF access to Foster Farms would resolve any issues Foster Farms might face over the next 30 days. BNSF trains moving from Midwest loading sites to Foster Farms' facilities in California would presumably operate primarily on trackage rights over UP. As a result they would be subject to any weather-related delays that might affect UP service. In addition, BNSF has no crews certified to operate over UP's Fresno Subdivision, which serves Traver and Turlock. If Foster Farms believes deliveries over the next 30 days might be insufficient, it should be acquiring additional trainsets on the secondary market to avoid repeating the loading gap it experienced in December after losing use of two of the reserved trainsets to which it previously had access.

As a final matter, UP feels compelled to briefly address three issues raised by the unverified “response” letter submitted by Foster Farm’s counsel on December 30. *First*, contrary to the claims of Foster Farms’ counsel, UP did deliver 20 loaded trains using Foster Farms’ four reserved trainsets in October and November of 2022. As Mr. Moore explains, in October, Foster Farms apparently sold two turns of its reserved trainsets to another shipper in the secondary market, so two deliveries did not go to Foster Farms. However, in counting the number of turns per train per month provided by UP, those deliveries are properly attributed to Foster Farms, since Foster Farms could have used them to build its feed inventory. Foster Farms cannot trade away its trainsets, then complain that UP did not provide a sufficient number of turns per month.

Second, Foster Farms attempts to blame UP for its loss of two reserved trainsets in December, claiming it had offered “above market prices to acquire them.” However, as the Board knows, UP makes reserved trainsets available at auction, so, by definition, Foster Farms lost the trainsets because its bid was below the market price.

Third, Foster Farms attempts to blame its “empty trainset gap” on UP. As Mr. Moore acknowledges, the gap resulted from the confluence of several factors. However, if Foster Farms had arranged for additional trainsets to be available for loading between December 6 and December 14 or between December 15 and December 19, it would not have been in such a difficult position when its next set of loaded trains was affected by the impacts of severe winter weather on UP’s operations.

UP is actively managing its resources and materials to mitigate weather-related disruptions to its service, while continuing to take all reasonable steps to ensure power

and crews are available to haul Foster Farms' trains. The Board should deny Foster Farms' request for an emergency service order.

Respectfully submitted,

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January 3, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of January, 2023, I caused a copy of the foregoing document to be served by email on all parties of record in STB Docket No. FD 36609.

/s/ Michael L. Rosenthal

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36609

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

**VERIFIED STATEMENT OF
BRADLEY S. MOORE**

My name is Bradley S. Moore. I am the Vice President of Customer Care and Support for Union Pacific Railroad Company, a position I have held since August of 2018. I began my career with Union Pacific in 1995 and have held management and leadership positions in Union Pacific's M&S and Operations Departments.

I am submitting this statement to describe the service status of the Foster Farms trains.

Foster Farms' Current Service

Since mid-December, Union Pacific's rail network experienced significant weather disruptions. Those disruptions included blizzards with whiteout conditions that shut down interstates preventing crews from getting to their trains; extreme temperatures freezing track structures and locomotive engines, the historic Northern California storm, and flash flooding leaving cars, homes, and tracks submerged. These disruptions significantly hindered our ability to move traffic according to plan. Union Pacific has issued our latest winter weather update to customers on Jan 2. The announcement highlights heavy rains are likely to continue in coastal and central CA, heavy snows in the Sierra Nevada Mountains, a powerful storm system bringing heavy snow, freezing rain and ice in the Midwest and Great Plains.

We have continued to move Foster Farms' trains across the system to their destinations

through a combination of anticipatory planning and addressing each incident as it arose. HS74 arrived at Traver on December 31, 2022. FR11 arrived in Traver on January 3, 2023. Both HS74 and FR11 were delayed due to rockslides resulting from torrential rains on the Canyon Sub and the safety measures (e.g., rail checks, repairs) that must be implemented after each incident. FR11, BR04, and AG04 were also impacted by an historic weather event in Northern California this past week creating temporary line outages on our Fresno and Sacramento subdivisions. BR04 and AG04 are both expected to arrive at their respective destinations on January 4, 2023. Both BR04 and AG04 were impacted by blizzards and extreme temperatures in the Great Plains and Great Lakes regions. FR12 has incurred multiple delays including a train/vehicle (semi) collision ahead on the Evanston Sub, I-80 being closed due to whiteout conditions, and our crew van being stuck in a snow drift in Wyoming resulting in a recrew. Despite these delays, FR12 is expected to arrive on January 5, 2023.

Service by BNSF

As noted in Union Pacific's reply, dated December 30, 2022, to Foster Farms' Petition for an Emergency Service Order, winter weather conditions coupled with an empty trainset gap led to Foster Farms' current position. Regardless of rail carrier, an adequate and consistent number of shuttle sets is required to meet Foster Farms demand needs.

BNSF trains moving from Midwest loading sites to Foster Farms facilities in California would operate primarily on trackage rights over Union Pacific. As a result, BNSF trains would be subject to the same condition-related delays affecting Union Pacific service. BNSF could alternatively choose to haul trains over their own trackage via much longer, resource-intensive (e.g., terrain differences requiring additional crews and locomotives) Northern or Southern routes. BNSF routing would increase the route mileage and transit times for Foster Farms

movements. Finally, BNSF has no crews certified to operate over Union Pacific's Fresno Subdivision, which serves Traver and Turlock. Considering those challenges, granting BNSF access to move train sets would not help Foster Farms.

As stated in our prior Reply, Union Pacific will continue to take all reasonable steps to ensure that power and crews are available to haul Foster Farms' trains. Union Pacific is actively managing its resources and materials to mitigate the disruptions Foster Farms and other Union Pacific customers are experiencing.

Expected Service for the Next 30 Days

Weather permitting, Union Pacific anticipates delivering 9 trains to Foster Farms' feed destinations during the month of January. This also assumes an adequate supply of shuttle sets and our ability to keep the trainsets in service to Foster Farms' facilities. This plan is based on the two Foster Farms trainsets delivering twice (FR11 & FR12), two one-time deliveries by trainsets from the secondary market (BR04 & AG04), two deliveries of a trainset from the secondary market (CG43), and one delivery by a trainset that we understand Foster Farms has contracted that has not yet been identified.

October/November Service

In October and November of 2022, Foster Farms operated with four contracted trainsets. Union Pacific delivered a total of 20 loaded trains using the four trainsets dedicated to Foster Farms—an average of 2.5 turns per train per month. Foster Farms directed Union Pacific to deliver two of its loaded trains to another receiver's in California; however, the trainsets still moved in service for Foster Farms.

Grain Shuttle Auctions & the Secondary Market

Grain shuttle (equipment) sets are bid monthly via an online auction, with the winning

bidder gaining the benefit of securing (reserving) the shuttle sets to use at their discretion during the contracted time period (typically six or 12 months). Union Pacific cannot provide Foster Farms shuttles outside the auctions as it would not be fair to other customers (often their competitors) who are bidding/paying as part of the auction.

When necessary, customers elect to purchase shuttle sets on the open (or secondary) market versus successfully bidding on their own shuttle sets. Secondary shuttle set purchases are typically negotiated between customers for a single train loading and subsequent delivery to a destination feed facility or export location. While open market shuttle set purchases offer a viable option to help fulfill demand needs, the typical short-term, singular nature of those sets does not offer the same consistent shipping patterns as reserved shuttle sets.

As outlined in Union Pacific's Reply dated December 30, 2022, to Foster Farms Petition for Emergency Service Order, Foster Farms lost valuable days by not having the same number of reserved shuttle sets available in December as in prior months. In addition to the weather impacts noted, the deficient number of Foster Farms sets consistently available for loading created gaps in train shipments between December 6 and December 14 and again between December 15 and December 19 when sets could have otherwise been cycling.

It is our understanding that Foster Farms has reached an agreement with another customer for use of two shuttle sets cycling roundtrip in January which should help prevent lost day impacts.

VERIFICATION

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge, belief, and information. Further, I certify that I am qualified and authorized to file this statement.

Executed on January 3, 2023.

A handwritten signature in black ink, reading "Bradley S. Moore". The signature is fluid and cursive, with the first name "Bradley" and last name "Moore" clearly distinguishable.

Bradley S. Moore