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BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
May 8, 2019
Part of
Public Record

STB Docket EP 754

OVERSIGHT HEARING ON RAILROAD DEMURRAGE AND ACCESSORIAL PRACTICES

WRITTEN SUBMISSION OF AG PROCESSING INC a cooperative

Commissioner Oberman, Vice Chairman Fuchs and Chairman Begeman. I appreciate the opportunity to participate in this hearing. My name is Greg Twist and I am the Senior Vice President of Transportation for Ag Processing Inc (known as AGP). AGP is a cooperative owned by 147 local and regional cooperatives that represent more than 250,000 farmers throughout the US and Canada. I have 36 years of experience in the agribusiness industry. I have witnessed firsthand deregulation through the implementation of the Staggers Act in the early 80's, the railroad mergers and consolidations of the 90's and the current move by some carriers toward the so called "Precision Scheduled Railroading" (PSR).

AGP's goal in participating in this proceeding is to point out how the Railroads' recent policy changes impact their customers and to specifically address accessorial charges and why we believe they are unfair and unbalanced. I will also attempt to provide the board with a flavor of the history that surrounded these decisions when they were made.

AGP's private railcar fleet is one of its largest operating expenses. Railroads have never offered railroad supplied tank cars, so AGP has always had to purchase 100% of our tank cars for transporting vegetable oil and biofuels. Covered hopper railcars are another matter. When I started with AGP in 1994 the majority of AGP's covered hopper railcars were supplied by the railroads (referred to as "system cars"). The railroads that served our plants at that time and

supplied the system cars were the Chicago Northwestern (CNW), SOO Line, Burlington Northern and Union Pacific. The industry practice was that covered hopper system cars could be ordered by the shipper one to two weeks ahead of their needed dates and the orders would be filled on a fairly reliable basis. When the UP bought the CNW in 1995 all of that began to change. The Union Pacific struggled to integrate the CNW operating network into their own platform and as a result, service deteriorated, creating a shortage of Union Pacific system cars to our processing facilities. During this time, the Union Pacific encouraged shippers like AGP to acquire and supply to Union Pacific more of their own covered hoppers (private cars or privates), as railroad capital was at a premium post-merger with the CNW and Southern Pacific.

As prompted, AGP took delivery of private covered hoppers in 1995 that cost approximately \$53,000 per car to build.¹ When AGP made the investment in these cars, the Union Pacific and other carriers paid full mileage payments to the shipper on these privately supplied covered hoppers pursuant to applicable law and regulations requiring railroads to compensate parties who supplied their own railcars. Shippers would send the various railroads an invoice each month for the mileage due for the use of the private cars, based on that month's shipments. Mileage was paid based on the value of the car. In 1995 full mileage for these covered hoppers was around 52¢ per mile.

To illustrate what shippers were paid by the railroads for the use of the covered hoppers in the mid 90's, I will use two destinations that AGP's facility located at Sergeant Bluff, IA shipped to at that time. A large domestic customer at Turlock, California and an export terminal located in Longview, WA. Turlock is 1,811 rail miles from AGP at Sergeant Bluff, IA and when AGP supplied a private car for this trip, AGP would be paid, by the Union Pacific, \$942 per car per trip based on the 52¢ per mile standard. Longview is 1,862 miles from AGP at Sergeant Bluff, IA and AGP would be paid by the Union Pacific \$968 per car per trip based on the 52¢ standard.

In the late 90's early 2000's railroads started converting from mileage payments to so-called zero rated private car allowances. Instead of paying mileage, the railroads would charge a

¹ We use building cost versus lease cost because supply/demand factors can greatly vary the monthly lease cost of both tank cars and covered hoppers.

reduced rate for shipments made in privately supplied railcars. In theory this made sense because the shipper would receive their mileage “payments” up front in the form of a discount for private equipment. This change streamlined the process and made mileage paid for private hopper cars a thing of the past. However, it also created a format for the railroads to arbitrarily and easily deteriorate the value of their customer’s investment in private equipment supplied to the railroad. Part of the railroads’ justification for reducing private car mileage payments was that in the early 2000’s, this business was moving, at the railroads direction, to more unit train shipments.² Unit shipments for soybean meal are usually shipped as 100 car units and are usually comprised of private equipment. The railroad rationale for reducing the private car mileage payments was that unit shipments would move faster, creating more “revenue” to the shipper per month per private car.

The move to unit train shipments from manifest shipments required shippers to build track, upgrade storage and load-out capabilities and invest in more private covered hoppers. AGP spent millions to make our plants unit train capable. AGP has spent over thirty-two million dollars to be able to load unit trains at Sergeant Bluff, IA, Saint Joseph, Missouri and Hastings, Nebraska.

Fast forward to today. As part of its Unified Plan 2020 - UP’s version of PSR, Union Pacific is currently transitioning soybean meal and products shipments to Turlock and Longview away from 100 car units and into manifest trains. There does not appear to AGP to be any operational or efficiency need to do this. Nevertheless, AGP has seen an increase in transit days to our export facility now located at Aberdeen, Washington of 114%. Also, one would think that now cars are moving in manifest service, and are not turning as fast, the private car allowance should increase significantly since moving to units and the faster transit was the reason given for reducing the private car mileage payments previously. The Union Pacific is currently shipping manifest shipments to Turlock, California and Aberdeen, Washington while protecting the 100 car rates only through September 30th.

² Unit shipments for soybean meal should not be confused with grain shuttles where the railroads provide all the equipment.

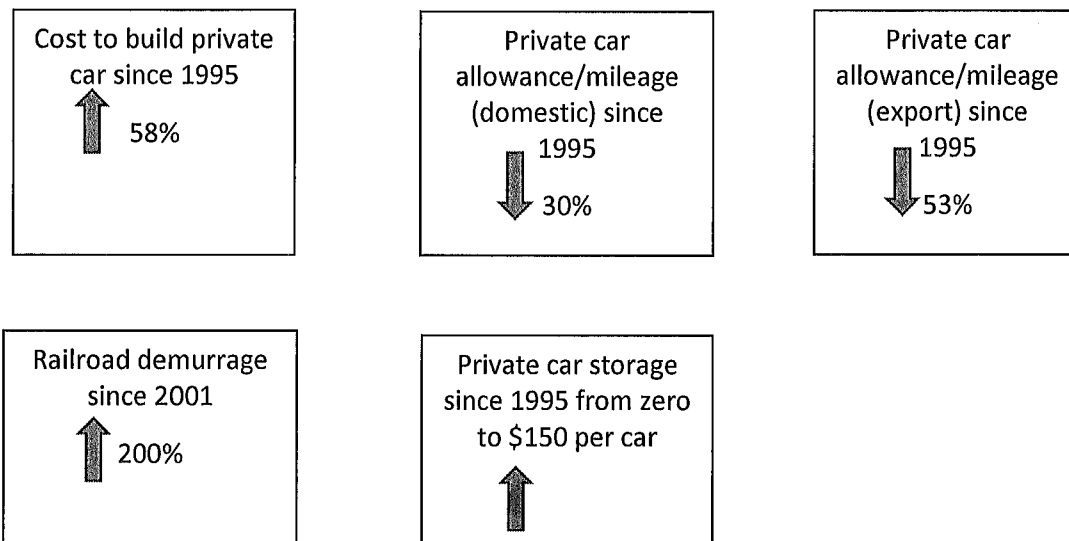
The two examples used earlier, for moves to Turlock and Longview now have a private car allowance (discount from a system car rate) of \$656 and \$454 per car respectfully. Meaning that private car compensation to AGP for movements of soybean meal to Turlock, CA has gone down 30% since 1995. Private car compensation for shipments to Longview, WA has gone down 53% since 1995. The UP's adoption of PSR and the corresponding slower transit time has further diminished the value of our private covered hoppers. Meanwhile AGP's cost to purchase a private car and supply it to the railroad has increased 58%.

Railroad equipment and the way customers secure system covered hoppers has also changed greatly since 1995. The UP currently has a system called PCAS (Processor Car Allocation System). Shippers who used to order railroad supplied equipment one to two weeks ahead of when it was needed to load, now need to make a commitment for an entire year, October 1 – September 30. The PCAS program requires the shipper to commit to the amount of cars that they are requesting from the UP each week, for the entire year. Under PCAS rules, the shipper is only allowed to change their PCAS commitment (number of cars needed) once during the year on April 1st, and cannot change the number more than 10%. If the shipper does not use all of the PCAS cars that they committed to each week, the shipper can be charged a \$250 per car cancellation penalty for every car not used. The PCAS system is very inflexible.

The Burlington Northern Santa Fe covered hoppers system is called COTS (Certificates of Transportation). COTS are much more market based. The BNSF has an on-line auction where customers can bid for cars for a 10 day time period. There is also a secondary market which provides liquidity to the COT program, however, both markets are by nature unregulated commodities which have great volatility. In the winter of 2013-2014 COTS traded as high as \$3,500 per car per trip (which is in addition to the freight rate paid to the BNSF) as the BNSF struggled during a rough winter. Both the UP and BNSF programs for railroad supplied covered hoppers put the shipper at risk. If the railroads run better than expected, it may force the shippers to cancel UP cars at \$250 per car and potentially pay higher private empty car storage. If the railroads run worse than anticipated the shipper could pay a premium of \$3,500 per car to the BNSF.

In addition to paying less to the shipper/receiver for supplying privates, the railroads value their own equipment considerably more than in 1995. Unfortunately, the oldest demurrage schedule that I could find was BNSF 6004 Series tariff dated August 1, 2001. In 2001, the BNSF charged \$25 per day demurrage for their system equipment and the shipper would earn 2 days credits for each car. Today the BNSF 6004-C charges \$75 per car per day for system car demurrage and the shipper receives one day credit per car. Private empty car storage charges (PECS) are now priced at \$140 per car per day on the UP³ and \$150 per car per day on the BNSF.⁴ There were no charges for private empty car storage at the time the UP encouraged shippers to provide private equipment.

So to recap changes in value of private cars versus railroad covered hoppers are as follows:



After committing capital to build private rail cars, AGP and other private car shippers must ask for and obtain loading authority from every railroad that the shipper expects to load the private rail cars on. The process for obtaining this loading authority for all private equipment is

³ UP 6004 Item 9890

⁴ BNSF 6004 Section 2

ostensibly governed by AAR Circular No. OT-5. The circular states that application approval for shipper provided cars cannot be denied by the carrier except for reasons of safety, mechanical factors or inadequate storage space. However, it has not stopped some railroads from adding additional creative and cumbersome requirements, over and above the OT-5 circular requirements, for shippers to obtain permission to load and ship private cars. These new requirements have also come along with creative charges in order to penalize shippers who do not, or cannot reasonably meet the newly created rules for obtaining permission to ship private cars. With these new requirements, the OT-5 process has strayed significantly from its intended goal of securing two things: 1) is the car safe and mechanically sound and 2) determining that the shipper has adequate storage to hold all the private cars that they are asking to load on the railroad.

Here are some of the OT-5 requirements and related accessorial charges by railroads. Canadian Pacific requests that all possible commodities and all possible origins be listed on the OT-5 application. If a commodity gets loaded in a private railcar that was not on the OT-5 application the CP charges us \$200 per car fee. The same applies if we load a car from an origin that was not specified on the application.⁵

Canadian National is now requiring us to provide every possible interchange point between the CN and originating carriers that we load rail cars on as part of their OT-5 application. Keep in mind we do not load any privates on the CN. AGP has no control over where the originating carrier, CP, UP, or BNSF connects with the CN but yet the CN wants us as a shipper to list every possible interchange. If we do not list all of these possible interchange points and obtain permission from CN to move, not load, private cars over these points, the CN will charge us \$200 per car.⁶ With OT-5 being a basic request to *load* private cars on said railroad, one has to wonder how the CN could possibly charge a customer for an OT-5 penalty for a car that did not load on their railroad.

⁵ CPRS Tariff 2 Item 8

⁶ CN Tariff 9000 Item 9400

The Norfolk Southern is now charging \$500 per car⁷ on cars that are not compliant with their version of the OT-5 application.

In summary, the railroads are asking for a lot more information than what was originally, and currently required by the AAR Circular OT-5. I was told at a National Grain Car Council meeting in September of 2018 that the railroads are trying to use accessorial charges to modify shipper behavior to become more efficient. The question I asked that day, which remains unanswered, is how does the additional information that the NS now requires prior to providing OT-5 approval make them \$500 more efficient per car?

As if OT-5 agreements and subsequent charges haven't veered far enough from their original intent, consider CN Tariff 9000 item 9405: If CN unilaterally identifies an impending issue with space at the loading location or yard, CN will re-direct railcars to the storage locations indicated in your OT-5 application. If these locations are unavailable or insufficient for any reason, CN will contact the party responsible for the railcars to obtain instructions on where to redirect the excess railcars. If CN has not received timely instructions from the responsible party, CN may move the railcars to an alternate storage location selected by CN. Additionally, the CN will charge the shipper or party deemed responsible for the movements to/from the storage location chosen by the CN and or the location identified on the OT-5 application.

In order to keep our private car fleet balanced and fluid between our facilities AGP requires the ability to divert empty cars on occasion. The railroads do the same thing with their fleet on a daily basis. In the past, one free empty diversion was allowed provided the car in question was not beyond a certain point causing out of route miles for the railroad. Recently the CSX came out with a charge of \$275 per car or \$2750 for 10 cars or more for empty car diversions.⁸ If this CSX policy is adopted by other carriers, shippers will have to decide; do I pay the diversion cost or pay more private empty car storage if I do not divert the cars. This is another example of how the railroads treat our cars differently than they do their own. The railroads win either way and once again the shippers pay!

⁷ NS Tariff 8002 Item 6560

⁸ CSX Tariff 8100 Item 1.2.4 and portions of CSX tariff section 1

The Union Pacific recently implemented a “not prepared for service” charge. For example let’s assume AGP has 10 cars billed and on a pull list for the UP at AGP’s Mason City, IA location. UP does commit to service on particular days of the week, but cannot tell us a time when it will arrive. However, when the UP arrives at our plant we might have one car not billed and not on the pull list which is parked between the UP locomotive and the 10 cars on the pull list.

Because we have no advance warning of UP’s arrival, we might not be able to clear the car to prepare for it. Under UP’s new tariff, it can charge AGP \$400 per car (\$4,000 total) because our cars were not immediately available for service. They can also leave the cars behind and still charge us \$4,000. Our facility at Mason City went one full week without service from UP this winter and would have shut down if we did not receive service from the CP. Yet according to the UP Tariff 6004 Item 9055 we need to be ready for service at all times or face severe penalties. There is no provision that I am aware of in UP’s tariff that gives AGP relief when its inability to be ready for service is due to the actions of UP, such as not providing sufficient notice so we can clear cars or take other steps to prepare for its arrival.

The Union Pacific also has, as part of their unit train service terms⁹, significant non-reciprocal charges that are assessed against the shipper. The unit train shipper must forecast the day a unit train will ship 30 days in advance and must adjust the date, if needed no later than 72 hours ahead of the time the train will be ready to ship. If the shipper cancels the unit train within 48 hours of the forecasted date, the shipper pays UP \$10,000. If the UP shows up on the date we forecasted and our unit is not ready to pull they can charge us \$2,000 for the first 24 hours and \$200 per locomotive per hour that they wait. However, UP again puts no obligations on itself to provide service at any particular day or time, and there is no credit or charge that the shipper can impose if the UP is not timely pulling the unit. For example, AGP billed a 105 car unit of soybean meal from Sgt. Bluff, IA to Mexico on 2/6/19 at noon (the forecasted date demanded by UP). The UP didn’t pull the unit from our plant until 2/9/19 at 7:00 p.m., 81 hours after billing. Had UP waited 81 hours for AGP to finish loading the unit train AGP would have been charged \$2,000 for the first day and then \$200 per hour per locomotive (times 3

⁹ UP 6004 Item 9613

locomotives) for a total of \$50,600. AGP did not receive any reciprocal compensation or consideration from the UP and we incurred additional labor costs double handling and switching cars around the unit train inside our facility for 3 days because of UP's failure to pull the unit train cars that clogged up our plant tracks and impeded our plant operations, which are continuous and in part designed around the estimated service levels UP provides us.

In conclusion I suggest that the Class I railroads as a group have done a masterful job of handing off much of their risk to their customers, who have made substantial investments in railcars and other rail assets in order to receive service. Railroads no longer have to worry about risk management for controlling their fuel cost, they simply pass on a mileage-based fuel surcharge on top of the line haul rate, which already has a fuel cost recovery component in it. The UP no longer has to worry about supplying system covered hoppers to customers but when it wants to it can demand and get a year commitment with little ability for the shipper to change.

Railroads don't need to worry about unreliable service because they make no commitments to provide service at any particular day or time and their tariffs do not contain provisions holding them accountable. If they bunch cars they simply force the shipper to pay more private empty car storage in railroad yards for the cars that can't fit in the shipper's facility. The transfer of risk has not been swift like the floods that recently hit the Midwest but a steady erosion over a number of years. It has been devastating none the less. The lack of reciprocity and commercial fairness is evident between shippers and railroads. I encourage the STB to take the same long vision forward that I have shown you looking back. You have the opportunity, I truly hope that you have the collective will to change the environment that we now operate within.