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Office of Proceedings
October 11, 2017
Part of
Public Record

Surface Transportation Board

Docket No. EP 742
Public Listening Session Regarding CSX Transportation, Inc.'s Rail Service Issues
October 11, 2017

Written Statement of The Fertilizer Institute

On behalf of The Fertilizer Institute ("TFI"), I want to thank the Surface Transportation Board ("Board") for its proactive oversight of the recent service problems impacting the shipping community, including TFI members, who rely on CSX Transportation, Inc. ("CSX") to move their raw materials and finished products.

TFI represents the nation's fertilizer industry, including producers, importers, retailers, wholesalers and companies that are engaged in all aspects of the fertilizer supply chain. Fertilizer is a key ingredient in feeding a growing global population, which is expected to surpass 9.5 billion people by 2050. Half of all food grown around the world today is made possible through the use of fertilizer. A reliable transportation network is vital to moving fertilizer around the nation, as a majority of all fertilizers (56 percent) move by rail throughout the year. As such, TFI strongly supports the Board's oversight of this matter.

While many TFI members, who depend on CSX, have and continue to experience service challenges, TFI notes that not all of its members are experiencing the same level of service challenges. For many of our members, however, the service degradation on CSX has been and continues to be a serious challenge.

Shortly after the change in leadership at CSX last March, TFI members began to experience service problems that gradually spread across the CSX network and, despite recent improvements, still are affecting CSX operations. Those problems have included significant transit and switching delays, switching errors, and extended yard dwell times. In one specific case, transit times between two facilities more than doubled and cars sat so long that the product was rejected by the customer. This same TFI member was forced to curtail production resulting in lost sales and costs estimated to be more than \$500,000.

A major point of frustration was CSX's decision to close longstanding interchanges with no notice. When that happened, cars were sent to these dead-end locations and often required weeks before they were turned around to a working interchange. One of our members had cars in an endless loop for 2 months while the end-destination was just 10 miles away.

Another point of frustration has been CSX's decision to cancel long-standing storage agreements with our members in its yards, with no clear reason provided for the cancellations, and very little time for our members who use these tracks to position cars close to plants, to adjust their operations. Similar to some of the interchanges suddenly taken out of service, these actions merited greater consideration and stakeholder consultation before implementation.

Beyond metrics, communication is the most ubiquitous issue for TFI's members. The changes implemented by CSX eliminated or changed many of the marketing and operating personnel with whom our members ordinarily would interact, often with little or no notice at all. There are a lot of new people, new to moving fertilizer, and under pressure to implement a new operating plan. As CSX's service metrics have suffered, so has its customer communications.

To be fair to CSX, a few fortunate TFI members have expressed that service is okay. But the consequences of CSX's service problems for most TFI members have been substantial. TFI members have been compelled to shift traffic to other, more expensive and less efficient, transportation modes when possible. As previously mentioned, they also have been forced to curtail their production. A small number of other members who otherwise would have suffered consequences escaped the brunt of CSX's problems because they have access to Norfolk Southern either directly or through reciprocal switching, which has allowed them to avoid or reduce their reliance upon CSX.

What makes this situation particularly difficult to understand and accept is the fact that it has been self-inflicted. CSX decided to introduce a radical new operating plan that involved closing yards, converting flat yards to hump yards, and reducing personnel over a short time period, without proper advance notice to its customers, and apparently without the full cooperation of many employees tasked with implementing the changeover. It is a case of trying to do too much, too quickly, and with too little communication. Unfortunately, it is the customer who is most dependent upon CSX—the captive customer with few or no options—who bears the brunt of the consequences with very little recourse.

This recent experience with CSX has exposed the inadequacy of the Board's existing emergency service remedies. Shortly after the service meltdown following the UP/SP merger, the Board adopted the rules and procedures codified at 49 C.F.R. Parts 1146 and 1147 to provide expedited relief for service emergencies and temporary relief for service inadequacies. These procedures are intended to allow a shipper to obtain direct service from an alternate railroad or indirect service through reciprocal switching and prescribed through routes in situations precisely like the recent CSX service problems. The expedited time frames for obtaining such relief are approximately 2 weeks up to 2 months. And yet not one CSX customer invoked these remedies. Why not?

The problem is that even these accelerated time frames are too long for a shipper whose plant is threatened with a shut down or whose customer may shutdown. Often, by the time a shutdown is imminent, we are talking about only days. Furthermore, even if the STB issues a decision within just 2 weeks from the filing of a petition, a lot still must happen before the shipper can actually file its petition, which means even more critical time is lost.

- First, the rules require the shipper to show a substantial, measurable deterioration of service over time. Thus, a shipper cannot immediately go to the STB no matter how dire its situation.
- Second, the shipper must demonstrate that it has had discussions with the incumbent railroad and adequate service is unlikely to be restored soon. Shippers already are doing this, however, including soliciting the assistance of OPAGAC. The STB already is the option of last resort.
- Third, the shipper must have a commitment to serve from an alternate railroad and present an operating plan that demonstrates how the alternate railroad's service can be provided without interfering with either carrier's operations. This also takes time. But the larger problem is that a potential alternate railroad can refuse to make such a commitment for just about any reason or no reason at all. Perhaps that carrier doesn't want to create precedent that might be used against

it in the future; or maybe the carrier just does not want to modify its operations for what may turn out to be a short-lived business opportunity. Shortline railroads also may be reluctant or unable to provide service due to paper barriers or because they are too dependent upon the incumbent Class I railroad.

Although this is a difficult problem to resolve, there are options for the Board to consider and potentially implement before the next service crisis arises. For example,

- Enact an expedited remedy for the exercise of Board authority, on a one-time basis, to direct the incumbent RR to prioritize cars needed to prevent a customer facility from shutting down. This would prevent harm while a shipper pursues one of the existing emergency service remedies that require more time to invoke, and also would be available to shippers who otherwise cannot take advantage of either existing remedy.
- Modify the current emergency service rules to focus on the imminent harm to the shipper due to the incumbent's service problems and be willing to order an alternate railroad to provide service.
- Expand reciprocal switching, consistent with the proposals in Ex Parte No. 711 (Sub-No. 1), so that more shippers will have alternatives available to them when service problems arise. This will benefit not just those shippers able to take advantage of reciprocal switching, but also other shippers who remain captive, because this will better enable the troubled carrier to handle its captive traffic and to more quickly restore and maintain fluidity across its network. In the spirit of the President's Executive Order seeking to limit government regulations, this situation is a perfect example of how reciprocal switching could improve service challenges and reduce the need for a regulatory body (the Board) to get involved at all.

Finally, recognizing that you cannot and perhaps should not redress every service failure through emergency service orders, the Board must be willing to award shippers damages caused by service failures when such failures are of the railroad's own making. While you do not have that authority with respect to contract transportation, it is within your authority to award damages for common carrier service issues. Furthermore, standards that the Board applies to common carriage often establish the baseline standard for contract carriage. Absent a demonstrated willingness to redress service issues through either emergency service orders or damages, the Board sends the signal that rail shippers are without any recourse for service failures.

Thank you for holding this listening session and for your engagement with CSX to help resolve the current service crisis.