

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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OVERSIGHT HEARING ON RAILROAD DEMURRAGE AND ACCESSORIAL PRACTICES

ORAL SUBMISSION OF AG PROCESSING INC a cooperative

Commissioner Oberman, Vice Chairman Fuchs and Chairman Begeman. Thank you for the opportunity to present here today. My name is Greg Twist and I am the Senior Vice President of Transportation for Ag Processing Inc better known as AGP. AGP is a leading agribusiness engaged in procuring, processing, marketing, and transporting of oilseeds, grains, and related products. AGP is a cooperative owned by 147 local and regional cooperatives that represent more than 250,000 farmers throughout the US and Canada. I started my career in agribusiness in 1982 and have witnessed first hand a number of changes in railroads structure, operations and profitability during this time. I appreciate the opportunity to address the Surface Transportation Board regarding demurrage and accessorial charges and the fundamental question of fairness.

Unfortunately, it is sometimes difficult to focus on these current charges without knowing some of the history of how they came about. I will do my best to shed some light on this history. The CNW railroad was bought and merged into the Union Pacific in June of 1995. In conversations with UP marketing personnel, AGP was encouraged to supply more of our own private covered hopper supply, 25% of our fleet at that time. The UP was dealing with a lack of system equipment and capital was at a premium as they took on the acquisition of the Southern Pacific Railway merger in 1996. The Burlington Northern had similar concerns with their acquisition of the Atchison, Topeka and Santa Fe Railway in 1996.

AGP invested in covered hoppers that cost about \$53,000 to build at that time. A similar car today would cost about \$84,000 to build, an increase of 58%. However, compensation on these covered hoppers has dropped 30% per trip to a domestic point like Turlock, California and 53% per trip to an export facility like Longview or Aberdeen, Washington since these cars were first built. Part of the rationale used to reduce our compensation on private covered hopper was the ability to turn cars quicker in units versus manifest service. Ironically, Turlock and Longview or Aberdeen are destinations that the UP has chosen to move back into manifest service as part of their PSR model. However, the UP has not increased the private car allowance as a result of their slower manifest service. Our export facility in Aberdeen, Washington experienced a 114% increase in transit time for UP cars since this operational change and this was prior to any flooding issues this year. Turlock will no longer receive unit shipments of meal starting June 1st according to the UP. I would expect a similar increase in their transit time.

When shippers like AGP started adding private covered hoppers demurrage charges were \$25 per day for railroad covered hoppers on the oldest BN tariff that we could uncover which was BNSF 6004 dated August 2001. At that time all the class one carriers held our empty private cars for free. Today, now that AGP is providing 90% of its covered hopper fleet the UP and the BNSF now charge more for private empty car storage than demurrage. UP is now at \$140 for PECS (private empty car storage) versus \$100 for demurrage and the BNSF is at \$150 per car on PECS versus \$75 for demurrage. How can these railroads charge more for private cars that they encouraged shippers to invest in versus demurrage for their own cars which should have a car component cost? Simply put, because they can.

Accessorial charges are completely tilted towards the railroads who wrote the tariffs. Take for example UP tariff 6004 item 9613, which deals with unit train service. AGP is required to forecast a day that the unit will ship 30 days in advance and can adjust that date no later than 72 hours ahead of the forecast date. AGP billed a 105-car unit at Sgt. Bluff, Iowa on 2/6/19 at noon destined for Mexico. The UP pulled the unit 81 hours later. Had AGP missed our projected time for the unit by 81 hours we would have owed the UP over \$50,000. AGP received no compensation because their tariff has no provisions to compensate shippers for their poor performance.

AGP competes against international competition in South America, mainly from Argentina and Brazil. These countries have spent millions of government dollars to reduce transportation cost from the source to export. Meanwhile rail transportation cost including accessorial charges, continue to climb in the US. AGP has a rail cost of approximately \$36 per short ton to move approximately 1,900 miles from our Nebraska crushing facility to our export facility. Our ocean freight to reach essential growth markets for soybean meal is approximately \$30 per short ton and moves approximately 6,700 miles. Put another way, our rail freight from our processing plants to Asian customers constitutes 55% of our total transportation cost, while only traversing 22% of the total miles. Accessorial charges only add to the challenge to compete long term.

The adoption of PSR by most of the class one railroads has brought with it a barrage of new charges all under the guise of efficiency. The UP recently added a “not prepared for service” charge which in essence penalizes shippers \$400 per car if they cannot immediately access cars that are listed to be pulled. However, the UP cannot accurately tell us the time of day to expect service. Our facility at Mason City, Iowa went one full week (three missed switches) in February, yet if they show up after no service for a week and find a rail car in our yard in the way of cars scheduled to be switched, they can charge us.

AGP received a notice of not ready for service on eight (8) different days between May 3rd and May 16th at our St. Joseph, Missouri plant. In every case our personnel at St. Joseph, Missouri used the UP’s automated “order X” system to order in cars as required. For example, on May 3rd we used the “order X” system to order 20 private covered hoppers from the UP yard.

“Order X” takes our request and applies 20 private covered hoppers against the order.

However, when the local switch crew is ready to serve our facility they discover the cars that “order X” has applied are not the most convenient 20 private covered hoppers to bring to our facility. So, they haul 20 of the most convenient covered hoppers to our facility which in turn guarantees “not ready for service” notice which would generate a bill for AGP if not disputed.

An invoice is generated because the UP automated system and local service crew cannot agree on what cars we should receive and we have to dispute the charge. I see that UP has changed and pulled back some of the types of things that can be charged on this tariff which was amended on May 17th and I applaud them for that. However, it would have been preferable to

resolve it in our home town of Omaha, not in Washington DC because of written testimony. The problem is that tariff interpretation usually generates bills that have to be disputed and thanks to PSR there are fewer and fewer people to talk to that have the authority to grant relief. AGP spends an inordinate amount of time disputing charges that are highly inaccurate.

The UP warned shippers that single cars need to be pre-blocked. In other words, cars headed to similar destinations need to be blocked together, a function that used to be performed at the local UP yard. The UP also suggested level loading of rail cars, meaning that an equal number of cars be switched out every day that we are serviced. That would be ideal if our plants were designed to just accommodate the UP but unfortunately, we have customers to service that require more truck loading Monday-Friday and thus more rail loading on weekends. What other business can provide a service and dictate how their customers run their business or levy a penalty. It will be interesting to watch if future accessorial charges develop from these.

Railroads used to be a key economic indicator for the US economy. My concern is that they have become an impediment to economic activity. Through their adoption of PSR they have lowered their operating cost through less capital expenditures which limits capacity, less local service which increases dwell time at shipper facilities which are not reported in their transit numbers. And accessorial charges which lack reciprocity, reward the railroads for their poor performance. The UP also reported personal injuries increased 22% in their last quarterly report versus a year ago, that concerns me as a customer.

My goal today was to present my facts with passion not emotion, to convey frustration with railroads behavior not anger. But I would be less than honest if I told you I was not very concerned about the wave of accessorial charges coming at us and thanks to PSR, fewer people to resolve erroneous charges at the railroads.

Railroads have done a wonderful job of redefining the English language. Customers no longer mean shippers but rather Wall Street. Shipper now means income stream necessary to please customers, see above. Railroad efficiency means customers doing more of their own work. And not ready for service means get out of our way when we finally make it to your plant. And my personal favorite; incentive means penalty. I was raised in rural Illinois as the youngest of four

boys and my father would occasionally have to spank one of us boys, and each time it was deserved, but he never referred to it as an incentive.

Mr. Oberman, you asked how the railroads have metrics that show greater efficiency and yet customers are complaining that their service is poor. Let me give you an example; the UP stated that they have gone from 55% to 65% of unit trains that can now load and unload in 24 hours. By removing customers who have made substantial investments, \$32 million dollars in our case, that cannot load in the new desired time of 24 hours it automatically raises the percentage of the remaining unit shippers. It appears on the surface that the UP has achieved greater efficiency when the reality is our trains which they moved from units to manifest service have increased by 114% in transit time and this excluded any flooding delays.

The UP also mentioned that they were not certain what the single car to unit train spread was during their testimony when we discussed the potential return criteria for our unit shipment investments. I mentioned that the spread was \$900 - \$1,000 per car. The spread to Mexico per the UP tariff is \$925 per car.

We also discussed the new \$3,200 charge per train that the UP is now charging for the remaining points (Mexico and California currently) that we ship units of soybean meal to. That charge is \$3,200 per train for both the empty drop off and loaded pick up, or an increase of \$6,400 per train. The UP responded that was because they had to pull the power off the units. One would conclude that this is a recent operational change when in fact the power has never stayed with the unit. This is just another example of accessorial charges that require the shipper to achieve a level of loading that is not realistic and for that reason they achieve a \$6,400 rate increase when they are handling the train as they always have.

I encourage the STB to use the power and authority you have to help balance these charges. My concern is if something is not done to balance these charges then there will be less shippers to testify going forward as railroads ration their way to greater earnings with capped capacity. I welcome your questions at this time.

I would like to add a few additional comments based on thoughts and activities that occurred after my testimony. One of the eastern carriers (CSX or NS) made the comment during the hearing that half of their customers don't pay demurrage. While fundamentally a true statement, it is a bit misleading. AGP is a customer and pays millions of dollars in freight bills to both the CSX and the NS. However because we have neither origins or destinations on their railroads, we would never be charged demurrage, nor would any other western shippers who access these carriers at a gateway like Chicago. A follow-up question I would raise is, of the customers who have either an origin or destination on your railroad, what percentage of these customers pay demurrage? The percentage should undoubtedly be higher.

During my testimony I had mentioned that the UP railroad had converted two of our four unit shipment markets for soybean meal to manifest service and that a third market, domestic California shipments, were moving to manifest service on June 1st. Subsequently the UP informed us that our unit shipment market to Nogales Mexico will convert to manifest service on July 1st.

The UP talked a lot about communicating with their customers during their testimony. However we received no notice from the UP as they eliminated additional local jobs at Saint Joseph, Missouri, our largest plant served by the UP. While the timing of the service cuts appears coincidental, the day after AGP's testimony at the STB, it does illustrate the speed at which PSR is mandating less local service. We anticipate that this reduced service will result in AGP having to pay higher accessorial charges to the UP. It also illustrates the lack of communications between the UP's operations group and customers and calls into question what is the UP's definition of common carrier obligation.

AGP has been actively working with the Canadian Pacific Railway (CP) to resolve a number of disputed accessorial charges for several months. The CP allows one day to load their system cars before demurrage starts. However, they consider day zero the day the system cars reach the CP yard in Mason City, IA. Day one would start at 12:01 AM the next day. The only way AGP could earn a credit is to load and bill a car on day zero. However, our plant at Emmetsburg, Iowa, which is served out of the CP yard Mason City, Iowa often receives their switch late at

night. Sometimes the cars are spotted at Emmetsburg after midnight. Effectively, by spotting cars after midnight, the CP used our entire day zero by spotting cars at our plant after midnight.

We proposed to the CP that AGP should receive one day credit for each car that was spotted after midnight because their poor performance did not allow AGP the opportunity to load these cars and earn a credit. Incredibly, the CP turned down our proposal and told us that “the intent of the tariff was not to use a credit from one car to another car that earned demurrage.” While we are still pursuing a settlement with the CP, I think their response was insightful as to how they look at credits and supports my testimony that the credit system is gamed towards the railroads and therefore is very difficult for a shipper to recover expenses as a direct result of railroad errors or arbitrary changes in railroad service schedules.

Lastly, I appreciate not only the opportunity to give testimony to the STB, but I welcomed the amount of questions that the board asked. I would be glad to answer any questions that the board may have in the future and sincerely hope that the board will help balance the scales which are heavily weighted towards the railroads currently.