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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. EP 665 (Sub-No. 2)

EXPANDING ACCESS TO RATE RELIEF

**REPLY COMMENTS OF
THE NATIONAL GRAIN AND FEED ASSOCIATION**

The National Grain and Feed Association (“NGFA”) hereby submits these reply comments in response to issues raised by other interested parties in their opening comments on the Surface Transportation Board’s (“Board” or “STB”) Advance Notice of Proposed Rulemaking (“ANPR”) served on August 31, 2016 in this docket. In its opening comments, submitted on behalf of itself and 29 other national and state agricultural associations (the Other Interested Agricultural Parties), the NGFA provided input in response to the ANPR, which sought comments and suggestions on a possible new rate review methodology that would apply to a subset of rail rate disputes, generally described in the ANPR as “very small disputes.” In these reply comments, the NGFA first addresses certain overarching issues raised in the opening comment round that affect the Board’s efforts to explore appropriate revisions to its substantive rate reasonableness standards. It then addresses certain aspects of the specific proposal set forth in the ANPR discussed in various parties’ opening comments.

A. There is No “Free Market” for Rail Transportation Service that Would be Disrupted and Harmed by the Modest Modifications to the STB’s Rate Reasonableness Standards Being Debated

It has become a common, but nonetheless inaccurate, refrain of the Association of American Railroads (“AAR”) and some of its Class I railroad members in virtually any Board proceeding exploring modifications to existing rules affecting railroad rates and rail-to-rail competition that *any* changes suggested by the Board to provide railroad customers with access to Congressionally mandated remedies would constitute impermissible and Armageddon-like intervention into an alleged fully functioning free market for railroad services emanating from the Staggers Rail Act of 1980. This proceeding is no exception, as the AAR, Norfolk Southern Railway, and BNSF Railway all make such claims in their opening comments. In its opening comments, the AAR asserts that “the competitive marketplace” constrains most rail pricing, and that “most shippers have competitive options when considering rail transportation.” AAR Opening Comments at 8-9. Such assertions echo recent public statements by its president inferring that the railroad industry is a “true free market.”¹ For its part, the BNSF asserts that the modest changes proposed in the ANPR must be rejected because they would “interfere with properly functioning markets,” and impose unfair burdens on railroads. BNSF Opening Comments at 2, 5. In addition, in Part II of its comments BNSF refers to “market forces” that it asserts would be disrupted to the detriment of railroads if the rate reasonableness rules were changed merely to provide shippers with a modicum of access to the Board to challenge unreasonable rail rates. *See also*, Norfolk Southern Opening Comments at 6.

Ironically, while the AAR and railroad commenters assert competitive markets constrain most railroad pricing, they also argue that the Board must preserve their right to engage in “demand-based differential pricing” at the expense of changes to rate rules. AAR Opening

¹ http://gsnmagazine.com/article/47476/railroad_industry_group_wants_federal_board_table

Comments at 3; Norfolk Southern Opening Comments at 2-5. Yet, the very concept of differentially pricing rail rates to captive shippers is a reflection of monopoly market power, since revenue inadequate railroads have the ability to increase rates beyond what otherwise could be charged in a truly competitive market. Indeed, if railroads operated only in a “free market” for rail services, their ability to differentially price would be neutered. To argue otherwise is disingenuous. By its very nature, differential pricing allows revenue inadequate railroads to charge shippers different rates for the same or lesser service based upon the shipper’s dependence upon the rail carrier. Differential pricing results in unequal rates and revenue-to-variable cost ratios for different commodities, geographical locations and shippers and producers. Consequently, with differential pricing, captive shippers bear a disproportionately higher share of a railroad’s fixed and common costs than non-captive shippers.

Simply put, the reason the Class I railroads vigorously seek to preserve the current market for railroad transportation services is because that market functions primarily to benefit them and their stockholders. Current “market forces” enable Class I railroads in many cases to charge rates well in excess of their costs and a reasonable return on investment without fear of meaningful competition or regulatory check.² Consequently, to state or imply the current railroad transportation market is a “true free market” that must remain forever free of any regulatory checks and balances does not reflect reality. The NGFA recently refuted this notion in its Reply Comments in EP 722, *Railroad Revenue Adequacy*, explaining at length how the competitive railroad market envisioned by framers of the Staggers Act has not existed for more

² The “market forces” railroad interests extoll include the facts that (1) four Class I railroads haul more than 95 percent of all freight; (2) rail service is dominated by two regional duopolistic Class I railroads; (3) large regions of many states are captive to a single Class I railroad, and (4) numerous other factors cited by the NGFA and other shipper interests that belie the notion that market forces by themselves encourage meaningful rail-to-rail competition or incentivize regular service.

than a decade. See Reply Comments of the National Grain and Feed Association, filed November 4, 2014, at 6-8 (which are incorporated by reference into these reply comments in this Docket).

The exertion of railroad pricing power also is revealed in a new report issued by the Government Accountability Office (“GAO”) pursuant to Section 14 of the Surface Transportation Board Reauthorization Act of 2015.³ As part of its audit of contract and tariff rate practices, the GAO interviewed the AAR and the four largest Class I railroads (BNSF, CSX, Norfolk Southern and Union Pacific) and reported that each said “railroads use differential pricing to charge the highest rate shippers are willing to pay....” 2016 GAO Report at 19. Further, GAO stated that in its interviews with shippers, they noted that rail carriers increasingly are exploiting their market power to embed high tariff rates within contracts in an effort to immunize themselves from rate challenges. For example, GAO stated that:

although contracts are negotiated between railroads and shippers, some shippers told us that because contracts also contain rates for multiple routes, they may be pressured to accept higher rates they view as unfair as part of a package of rates they agree to, particularly if some of the shipper’s routes are captive. Specifically, three selected shippers said this situation can arise when faced with a contract containing multiple O-D routes where they view some routes as priced too high by the railroads. In this situation, they have two choices: (1) accept the contract and pay higher rates for some routes, or (2) reject the contract and opt instead to move their freight by tariff, which could result in higher prices for all the routes....

Id. These assertions, too, belie the railroads’ mantra of allegedly operating in a market where strong competitive forces constrain railroad rates.

³ Government Accountability Office, “*Freight Rail Pricing: Contracts Provide Shippers and Railroads Flexibility, but High Rates Concern Some Shippers*,” December 2016. (“2016 GAO Report”).

Finally, in a properly functioning market, a service provider that does not adequately prevent or anticipate service disruptions to its customers is punished by losing market share. However, in the current railroad market, as shippers witnessed in 2013-14, the lack of viable rail alternatives translated into nationwide service crises where agricultural railroad customers absorbed huge commercial losses but their Class I railroad providers did not. This most recent service crisis was preceded in 2006-07 for similar reasons and with similar results.

The Board's ongoing review of its rate rules must take place with the foregoing more realistic view of the rail transportation market in mind. The NGFA concurs with AAR that Congress and the ICC intended for the rate rule process to be "simply a regulatory backstop for those relatively rare instances where the competitive marketplace is not already constraining railroad pricing." AAR Opening Comments at 8. However, the level of competition between rail carriers envisioned by the framers of the Staggers Rail Act of 1980 has been absent for well over a decade now, and this fact must be a key consideration of the Board's current deliberations.

B. The Board Should Complete the Work it Began in EP 722, *Railroad Revenue Adequacy* as Part of its Current Review of its Rate Reasonableness Rules

The NGFA concurs with the suggestion contained in the opening comments of the Montana Wheat and Barley Commission ("MWBC") *et al.*, and American Chemistry Council ("ACC") that the Board's efforts to examine changes to its substantive rate reasonableness rules would be aided by the Board completing the effort it began in 2014 in EP 722, *Railroad Revenue Adequacy*. That proceeding was commenced for the purpose of accepting public comment and suggestions on the rules and policies regarding (1) railroad revenue adequacy determinations and (2) the appropriate rate levels that a revenue-adequate railroad can charge. Its commencement was timely, since all major Class I railroads are either revenue adequate under the STB's criteria, or are nearly so. The Board compiled a significant administrative record in EP 722 from

numerous stakeholders on these and other issues related to railroad revenue adequacy and how it should be accounted for when making rate reasonableness determinations.⁴

As other commenters in this proceeding have pointed out, completing the process begun in EP 722 could potentially provide a means by which rate disputes of all sizes could be resolved more quickly and less expensively than under the Board's current rules, especially SAC and SSAC. This would alleviate some of the concerns expressed by the Board in this proceeding about cost and complexity. Completing the work begun in EP 722 also would provide the Board with useful information on some of the issues raised by Class I railroad interests in opposing substantive rate standard modifications. For example, as stated previously in their opening comments in this proceeding, the AAR and certain Class I railroads place great emphasis on their view that the Board must prioritize the preservation of a railroad's statutory right to engage in demand-based differential pricing of captive shippers ahead of substantive regulatory reforms that might result in reducing unreasonable rates. Norfolk Southern Opening Comments at 2 ("the STB's proposed fourth rate reasonableness methodology would erode carriers' ability to engage in lawful and necessary differential pricing, thus compromising the health of the rail industry and minimizing the welfare of rail shippers." *See also, id.* at 3-4, and AAR Opening Comments at 3-4, and 12.

However, the statutory scheme also contemplates that the need for a railroad to engage in demand-based differential pricing should be lessened, if not disappear altogether, once a railroad achieves revenue adequacy. The 2016 GAO Report noted this aspect of the applicable legal

⁴ The NGFA also points out that its proposed Ag Commodity Maximum Rate Methodology submitted to the Board in EP 665 (Sub- No. 1) was designed in part to take into account whether the defendant railroad is, or is not, revenue adequate.

framework, stating “according to two economic studies of railroad economics,⁵ the Class I railroads may now be earning adequate returns on investment, and perhaps sometimes in excess of adequate returns, so measures to reduce the amount contributed by captive shippers to railroad returns may be appropriate.” 2016 GAO Report at 20.

Lessening the ability to differentially price rates to captive shippers should not have any adverse effects on the financial health of the carrier in question provided its revenue adequacy status is maintained. As shown in recent revenue adequacy determinations of this Board, and demonstrated by the record compiled in EP 722 and other proceedings, the Class I railroads have achieved revenue adequacy either under the Board’s criteria or other benchmarks applied to businesses by Wall Street. The opening comments of railroad parties in this proceeding largely ignore this critical development in their industry and its potential impact on rail rate reasonableness standards. Yet, even the AAR acknowledges that: “[T]he question for the Board in regulating rates simply is what *degree* of differential pricing should be allowed on traffic without effective competition.” AAR Opening Comments at 12 (emphasis in original). Reaching closure on the rules governing revenue adequacy determinations and how the achievement of revenue adequacy factors into rate reasonableness review is therefore an important input to answering this question.

Consequently, the completion of the inquiry the Board started in EP 722 to review its revenue adequacy policies and how the railroads’ achievement of revenue adequacy affects the Board’s substantive railroad rate reasonableness standards would help the Board evaluate Class I railroad claims that changes to the standards would result in the harms the railroad parties allege.

⁵ Christensen Associates, “*An Update to the Study of Competition in the U.S. Freight Railroad Industry.*” *Final Report. Prepared for the Surface Transportation Board.* November 2010. Pittman, Russell: *The Economics of Railroad ‘Captive Shipper’ Legislation*”, EAG 10-1. January 2010.

C. The InterVISTAS Report⁶ is Only One of Several Studies the Board Should Refer to When Considering Modifications to its Rate Reasonableness Rules

The opening comments of railroad parties repeatedly cite the recently completed InterVISTAS report as justification for their stance that the Board should abandon its efforts in this proceeding because they maintain this report concluded the Board's simplified procedures are "available to shippers" and that the three benchmark test is a cost-effective means for shippers with small claims to challenge the reasonableness of their rates. *See, e.g.,* AAR Opening Comments at 7; Norfolk Southern Opening Comments at 8. The NGFA maintains that these parties have oversimplified and overstated the InterVISTAS report's conclusions and the extent to which its drafters actually examined shippers' claims of the barriers preventing them from using the Board's simplified rate standards and procedures.

Moreover, it simply is not tenable for the AAR to assert that "[t]here is no evidence that the Board's process [sic] is inaccessible for small shippers or for others." AAR at 8. Such a position utterly lacks credibility, given the reams of argument, written and oral testimony, and other evidence collected by the Board on this precise issue for the past decade in Ex Parte 646 (Sub – No 1), *Simplified Standards for Rate Cases*, EP 665, *Rail Transportation of Grain*, EP 705, *Competition in the Railroad Industry*, EP 680, *Study of Competition in the Rail Industry*, EP 715, *Rate Regulation Reforms*, and other proceedings.

Similarly lacking in credibility is the AAR's statement that none of the Board proceedings since 2005 contain any evidence that the rate rules are not accessible to most shippers, but rather contain only "anecdotal claims put forth by the trade associations and interest groups representing agricultural interests in the EP 665 (Sub-No. 1) docket that the Board's

⁶ InterVISTAS Consulting, Inc., *An Examination of the STB's Approach to Freight Rail Rate Regulation and Options for Simplification*, (dated September 14, 2016).

existing rate reasonableness rules are inaccessible.” Not only is this simply not true given that individual shippers and groups of shippers have participated in all, or nearly all, of the foregoing STB proceedings, but the NGFA pointed out in its opening comments that the inaccessibility of the Board’s rate rules has been confirmed by independent studies, most recently the study of the National Academies of Science’s Transportation Research Board (“TRB Study”), which recognized that shippers of commodities that move predominantly by common carriage, particularly bulk grain and other farm products, *do not* have ready access to the Board’s simplified rate-challenge procedures. Specifically, the TRB study found “[t]hese shippers maintain that the caps on awards were too low to justify the expense of bringing a case, the standards (including a simplified version of SAC) remain inappropriate to their circumstances, and the decision criteria for an unreasonable rate ruling remain unclear.” TRB Study at 23.

The fact that the Board’s existing rate-challenge methodologies are inappropriate and not useful to grain and other agricultural shippers is illustrated further in the 2016 GAO Report, which found that from 1996 to 2016, the Board reviewed 50 rate-reasonableness cases, 48 of which involved coal and chemical shippers. 2016 GAO Report at 16.

As additional evidence, the NGFA notes the TRB Study found that even though coal shippers maintain that the Stand-Alone Cost (SAC) process is “burdensome and leads to rates being judged reasonable at conservatively high levels out of deference to revenue adequacy..., even with these concerns coal shippers have demonstrated the ability to bring SAC cases and prevail in them.” TRB Study at 84. Yet, the TRB Study notes, “Grain shippers, in particular, have argued that the design of a stand-alone railroad entails large litigation expenses that cannot be justified when a grievance involves a relatively small claim.” *Id.* at 85.

For similar reasons, grain and other agricultural shippers have been unable to make use of the two “simplified” rate-challenge methodologies developed by the Board. From 1999 to 2014, five rate cases have been adjudicated before the STB on the basis of the simplified SAC procedure – all involving chemical shippers. Likewise, since establishment of the Three-Benchmark (3-B) process in 2007, only five cases have been filed – all by chemical shippers.” *Id.* at 86-87.

While the InterVISTAS report provides a useful summary of U.S. freight rail rate regulation, its fundamental shortcoming is its failure to explore or provide any critical new thinking regarding alternative rail rate regulation approaches that merit the Board’s consideration. This is disappointing, given this was one of the Board’s charges to InterVISTAS. Instead, InterVISTAS examined only the existing three rate methodologies employed by the Board. By contrast, the TRB study, while recognizing the limitations inherent in the statutory framework under which the Board must operate, was not constrained by any such self-imposed limitation. As such, the TRB Study represents a much more comprehensive and insightful evaluation of the nation’s railroad transportation system since the enactment of the Staggers Rail Act of 1980, and its recommendations to modernize the regulation of rates and service as railroads achieve revenue adequacy merit strong consideration by the Board.

D. The Board Should Not Delay Issuing a Decision Addressing the Standing and Transparency Issues Raised in EP 665 (Sub – No. 1)

The NGFA also concurs with commenters that have urged the Board to follow through on the statement in its August 31, 2016 decision in this proceeding that it will issue a separate decision on the standing and transparency issues addressed by the NGFA and other parties in EP 665 (Sub- No. 1). Opening Comments of MWBC, *et al*, at 8. As discussed in that proceeding, standing issues are critical, particularly to rail shippers of agricultural commodities. To reiterate

the NGFA's main points on this issue, the rate rules the Board adopts for such shippers must not diminish the current ability of parties who are both directly and indirectly affected by rail-rate practices to have standing to challenge the reasonableness of a rail rate. Because of the structure of the agriculture industry, potential parties harmed by unreasonably high rail rates include (1) individual producers, agricultural cooperatives, grain elevators and marketers, processors, commodity receivers, exporters and other market participants, as well as (2) groups of market participants, such as agricultural producers, whether filing on their own behalf or under complaints filed by state agencies or attorneys general. Clarity on the standing of these parties under 49 U.S.C. §11701(b) to pursue relief from rates believed to be unreasonable is a key component of any rate reasonableness rule review and the Board should not delay issuing the ruling it has promised on these issues.

E. The STB Should Consider Adopting Rules that Apply to Agricultural Commodities as a Means to Test a New Methodology Before Considering Whether to Expand it to Cover All Other Commodities

In their opening comments in this proceeding, as the NGFA had previously in EP 665 (Sub – No.1), the NGFA and Other Interested Agricultural Parties provided substantial justification as to why rail movements of grains, oilseeds and other agricultural commodities differ in fundamental ways from non-agricultural commodities, such as coal, ores and chemicals, and therefore warrant their own appropriate and workable rate-challenge methodology. These unique differences, which are not disputed by other shipper or railroad stakeholders, include (1) wide geographic dispersion and largely rural locations of agricultural production, grain handling and processing facilities – often in remote areas reliant upon a single carrier for service; (2) year-to-year fluctuations in the quantity and quality of commodities produced because of vagaries in weather and crop-growing conditions that result in abrupt changes in commodity surplus and deficit areas, as well as crop quality attributes, that realign commodity movements and change

origin-destination pairs; (3) embargoes, import restrictions and changes in governmental agricultural policies and farm price-support programs that influence producer planting decisions, both in the United States and internationally; (4) changing demand from end-users of commodities in response to fluctuating customer demand for their products; (5) the comparatively lower value of agricultural commodities on a per-unit basis compared to non-agricultural products; and (6) the fluctuating demand for rail service, as evidenced by the existence of auctions for freight rail equipment and the secondary market for railcars in the grain and oilseed arena.

The NGFA and Other Interested Agricultural Parties also cited data showing that grains and oilseeds represent the largest commodity group still subject to tariff rates – and hence potentially eligible for rate oversight by the Board. The 2016 GAO Report found likewise, noting that “food products” and “farm products” are the two commodity groups that were shipped the least under contract rates between 2005 and 2014. 2016 GAO Report at 15. More significantly, the opening comments of the NGFA and Other Interested Agricultural Parties also noted that the TRB Study found that rail transportation rates for grain and oilseeds have increased far in excess of the rates for other commodities over the same time period, despite factors that seemingly would produce lower rates. NGFA Opening Comments at 6.

In addition to the current lack of access to rate remedies at the Board for grain and other agricultural shippers, another incentive for the Board to develop a new, simplified rate-challenge methodology applicable, at least initially, solely to agricultural commodities is that such a methodology could be designed to be relevant to the unique characteristics of agriculture. The Board’s experience with such a methodology could be used to evaluate and refine it before determining if a similar approach has merit for other commodities prospectively. As noted

previously, the NGFA believes that rate challenges filed under a new rate-challenge methodology limited to grain and other agricultural commodities would be limited and manageable.

Another attraction of this more measured approach is that it could lead to additional innovative thinking by the Board on the type of rate-challenge methodology that is most appropriate for agriculture. For example, while the NGFA still maintains that the Board should give careful consideration to its Ag Commodity Maximum Rate Methodology proposed in EP 665 (Sub-No. 1), the NGFA would not be averse to the Board exploring an alternative agriculture-specific rate-challenge approach that relies upon a streamlined procedural schedule – perhaps with page and time limits – to address various elements contained in the ANPR. For instance, the Board, as it has proposed, could develop an initial comparison group of comparable traffic to the traffic represented by the challenged rate. It then could provide the complainant shipper and defendant railroad with a one-time opportunity to propose alternative comparison groups, with the Board then developing the final comparison group based upon what it believes to be most representative after considering the parties’ submissions. Likewise, a similar process could be developed for the parties to submit market-dominance evidence and other relevant factor information in an initial and an adjusted final offer of evidence, thereby enabling each party to make its strongest arguments to the Board. The Board then could weigh the presented evidence while still reserving the right to make its own determinations.

This approach is not dissimilar from the NGFA’s own Arbitration System, under which the parties involved in a case are responsible for presenting their best evidence under compressed and strictly enforced timelines, with the arbitrators then making a decision based upon the facts presented (which under NGFA Arbitration also involves evaluation of adherence of the parties to

the contract into which they entered, and the relevance and application of the NGFA Trade Rules and customary trade practice). This also would allow the Board to experiment with the TRB Study's recommendation that it consider competitive rate benchmarking – while still reserving in the Board the ultimate power to decide rate cases – within a subset of potential rate challenges involving solely grain and other agricultural shipments before determining whether such an approach has broader relevance and application to other commodities prospectively.

F. Reply Comments on Specific Aspects of the ANPR

The NGFA and the Other Interested Agricultural Parties provided detailed comments on several aspects of the Board's proposals in their Opening Comments. Here, the NGFA replies to the opening comments of others on two components of the ANPR.

1. Market Dominance

A salutary aspect of the ANPR is its proposal to simplify the jurisdictional test of market dominance required by 49 U.S.C. §10707 through potential preliminary screens and streamlined evidentiary and discovery mechanisms, such as initial disclosures. The NGFA is very much in favor of the STB's efforts to simplify the required market dominance determination in situations where it is plainly evident that a defendant railroad possesses it.

In their opening comments, the individual railroad parties on balance do not disagree that the Board has the authority to modify its market dominance standards by further simplifying them. UP observes that “the Board was not directed by 10701(d) to adopt simplified standards for making market dominance determinations.” UP Opening Comments at 10. However, UP acknowledges that the Board has this authority although it alleges, erroneously in our view, that the proposals in the ANPR do not pass muster under ICCTA's statutory scheme. *Id.* Similarly, CSX does not dispute that the STB has authority to simplify its market dominance standards; but

it also argues that the Board has gone too far: “When considering ‘shortcuts’ to the market dominance test, the Board should keep in mind the significant simplifications that it has already made to its assessment of effective competition.” CSX Opening Comments at 11. “These limitations have gone much too far and are inconsistent with Congress’ basic command that the Board not regulate any rate subject to meaningful competition.” *Id.* at 12-13. BNSF strikes a similar cord. *See* BNSF Opening Comments at 13 (“But even if the preliminary screen were to identify movements that are most likely to be made by a railroad with market dominance, the statute still requires a determination that market dominance actually exists. The Board cannot justify the use of a lesser standard on grounds that the statute will likely only be violated in a relatively small number of cases.”). Only the AAR goes so far as to assert – erroneously – that “there is no statutory basis for the Board to shortcut the analysis of market dominance under 49 U.S.C. 10707.” AAR Opening Comments at 13. AAR also argues that preliminary screens paired with an abbreviated process would deny the defendant’s due process rights to challenge STB jurisdiction. *Id.* at 14.

The Board clearly has authority to adopt modifications to its rules implementing §10707 that result in the simplification of those rules. This issue was settled in *Ex Parte No. 627, Market Dominance Determinations – Product and Geographic Competition* (served April 6, 2001) *aff’d*, *Association of American Railroads v. Surface Transportation Board*, 237 F.3d 676 (D.C. Cir. 2001). As the court determined in affirming the Board’s removal of product and geographic competition from the market dominance test, in part to simplify the test and make it less costly, such modifications must be consistent with the language and intent of §10707 and other relevant statutory provisions.

The NGFA therefore encourages the Board to continue to explore appropriate modifications to its market dominance rules that will further simplify them consistent with the applicable governing statutes. The measures proposed in the ANPR and discussed in this docket (preliminary screens, initial disclosures by complainant and defendant, and appropriate limits on discovery) provide a good first step toward this end.

2. Relief Caps

In its opening comments, the NGFA noted there was no reason to limit the relief available under a grain-specific rate-challenge methodology to “significantly less” than the relief available under a Three Benchmark analysis. NGFA Opening Comments at 9-10. The NGFA believes that establishing an unreasonably low rate cap would defeat the purpose and intent of creating an accessible and workable rate-challenge methodology for agricultural shippers, and would result in few, if any, rate cases being brought by even agricultural shippers that are subject to unreasonable rates.

As an alternative, the NGFA proposes that the Board consider requiring the aggrieved shipper bringing a rate challenge to submit with its evidence the level of, and justification for, the rate-relief remedy being sought in the given case. If the Board subsequently determines that the rate is unreasonable, it could either accept the shipper’s rate-relief remedy or make its own independent determination of the appropriate remedy based upon the evidence submitted and degree of economic harm demonstrated in the case. Further, as an informal guideline, the Board could state that it generally would not be inclined to award remedies exceeding the estimated \$5 million cost of bringing a SAC case unless it finds a higher remedy justified by the facts of the individual case.

IV.

CONCLUSION

The NGFA appreciates the Board's consideration of its views in this important proceeding.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I do hereby certify that on this 19th day of December 2016, I have served a copy of the foregoing Reply Comments of the National Grain and Feed Association by first class mail on each of the following Parties of Record:

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