

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 575

REVIEW OF RAIL ACCESS AND COMPETITION ISSUES –
RENEWED PETITION OF THE WESTERN COAL
TRAFFIC LEAGUE

OPENING COMMENTS OF
NATIONAL GRAIN AND FEED ASSOCIATION

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Dated: March 8, 2006

National Grain and Feed Association ("NGFA") files these Opening Comments in response to the Board's Decision of February 1, 2006 (the "Decision").

NGFA is comprised of some 900 companies in the United States, Canada, and Mexico involved in all aspects of grain merchandising, processing, storage, transportation, feed manufacturing, integrated livestock operations, exporting, and importing grain and grain products. NGFA members include small country elevators, as well as the largest firms in the industry, most with access to only a single rail carrier at each of their rail-served facilities.

As NGFA reads the February 1 Decision, the Board at this time is seeking comments on *whether* to institute a rulemaking to address agreements to sell or lease a rail line when such agreements restrict the ability of the purchaser to interchange traffic with competitors of the seller, rather than comments on specific rules to address that issue. NGFA is of the view that a rulemaking should be instituted.

Restrictions placed by Class I railroads in agreements to sell or lease rail lines that restrict the ability of the purchaser or lessee to interchange traffic with competitors of the selling or landlord railroad commonly are called "paper barriers." Normally, they act to prohibit or inhibit a short line railroad, purchasing or leasing track, from interchanging cars with any connections of the purchasing short line that provide alternative routing in competition with the short line's vendor or lessor.

Paper barriers produce several results of a negative nature for shippers located on short lines subject to such restrictions. First, they restrict or bar short line originations and terminations from moving over competitive routes. Second, because competitive routes are foreclosed, they subject the short line's traffic to potentially higher rates than

would be available under competitive circumstances. Third, because most short lines depend on Class I connections for car supply, they may limit the ability of short lines laboring under paper barrier conditions to receive an adequate and timely supply of cars. This particular effect of paper barriers is especially relevant in the grain industry, where smaller grain facilities often rely on Class I carriers for car supply. Fourth, by foreclosing route selections, paper barriers may compel short line traffic to move over routes that are more congested than routes otherwise available in the absence of paper barriers.

NGFA recognizes that the use of paper barriers may bring about some indirect benefits to rail customers. The avowed value of paper barriers is that they encourage large railroads to sell branch line or other properties while those properties are in sufficiently sound physical shape to handle traffic without major rehabilitation expenses, thus making those properties attractive for short line purchase and operation. Without such a market, the theory goes, large railroads would simply allow branch lines or other marginal properties to accumulate deferred maintenance, launching them on a certain road to abandonment.

However, even if paper barriers may help preserve some trackage for continued use, it does not necessarily follow that paper barriers imposed as a condition of track sale or lease should be continued in perpetuity. As the renewed petition of the Western Coal Traffic League suggests, if paper barriers are justified at the initiation of a sale or lease transaction, there may come a time when they outlive their economic justification. If a Class I railroad is willing to sell branch or other properties for less money in return for being able to retain traffic generated by that branch, a time will come when the Class I

carrier will have recouped, through retained traffic, the differential sales price for the branch line.

A rulemaking is an appropriate method for the Board to consider whether, or under what circumstances, if any, paper barriers should be permitted. The Board plainly has jurisdiction to do so pursuant to its broad authority arising under Chapter 109 of the Interstate Commerce Commission Termination Act, as well as under the provisions of 49 U.S.C. 10742, providing that a rail carrier "shall provide reasonable, proper, and equal facilities that are within its power to provide for the interchange of traffic...."

WHEREFORE, NGFA urges the Board to institute a rulemaking to consider whether to adopt rules eliminating or limiting the use of "paper barriers" to control the flow of traffic between railroads.

Respectfully submitted,

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