



ASSOCIATION OF AMERICAN RAILROADS

Office of the President
Edward R. Hamberger
President and Chief Executive Officer

December 13, 2006

Ex Parte 646-1

Mr. John Ficker
President
National Industrial Transportation
League
1700 N. Moore Street
Suite 1900
Arlington, VA 22209

Mr. Kendell Keith
President
National Grain and Feed
Association
1250 Eye Street, N.W.
Suite 1003
Washington, D.C. 20005

Dear John and Kendell:

Thank you for sending me a copy of your letter to Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey regarding the recent AAR press release on the Surface Transportation Board's small rate case proceeding.

I am glad to see that you recognize in your letter that the Board faces difficult challenges in addressing ways to resolve small rate case disputes. It is a position that the AAR and its members share with you. Indeed, small rate case guidelines have been the subject of numerous ICC and STB proceedings for a number of years.

I also certainly agree with you that any rules that the Board ultimately adopts must be well supported by the record and adopted on the basis of their merits and the law. I was, however, perplexed by the tone of your letter suggesting that our press release somehow constituted an ex parte contact with the Board, particularly since the AAR's release merely expressed what was already in our formal filing with the Board – much, I might add, the same as the NGFA press release of October 26, 2006 (copy attached).

As we have discussed in the past, our Associations can aid the STB in its difficult task by trying to find agreement on proposals that we can jointly support before the Board. In that regard, I am pleased to read in your Associations' current request for extension of time to file rebuttal comments in the proceeding – to which the AAR had no objection

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– that a reason for the request was to consider a suggestion from the AAR on the maximum value of a small rate case. In the AAR's response to that request, we again stated that we would welcome discussion with you to seek common ground on approaches to support the Board's objectives. That offer remains open.

Sincerely,

A handwritten signature in black ink, appearing to be 'E. Hamberger', written in a cursive style.

Edward R. Hamberger

Cc: Chairman Nottingham
Vice Chairman Mulvey
Commissioner Buttrey
Parties of Record in Ex Parte No. 646 (Sub-No. 1)



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Agricultural Groups Urge STB to Revamp Flawed Proposal for Challenging Excessive Rail Rates

For Release
 IMMEDIATE (October 26, 2006)

WASHINGTON – A diverse array of 40 national and state agricultural organizations have united to urge the federal Surface Transportation Board (STB) to revamp a flawed proposal that would make it virtually impossible for agricultural shippers to challenge excessive rail freight rates.

In a joint statement filed this week, the groups representing agricultural producers and commercial shippers, receivers and exporters of grains, oilseeds and grain products said the STB's proposal to amend its so-called "simplified guidelines" for challenging unreasonable rail rates would instead deprive shippers of meaningful access to regulatory relief and place them in an even more untenable situation than exists currently.

The organizations noted that agricultural products have been subjected to an increasing number of double-digit rate increases in the past two years, which magnifies the need for agricultural shippers to have access to an expeditious, cost-effective and fair regulatory process for challenging unreasonable rates. Further, a recent study by the Government Accountability Office (GAO) – the investigatory arm of Congress – found that the increases that have characterized rail rates for agricultural products since 1985 were atypical from the rate reductions that have occurred for coal, motor vehicles and other non-agricultural shipments. The GAO study, issued in September, also found that the greatest increases in the percentage of rail tonnage shipped at rates exceeding 300 percent of a railroad's revenue-to-variable cost were occurring in rural areas where grain shipments are prevalent.

"[We] recognize that economically healthy freight railroads are in the interest of all who require their services," the agricultural groups said. "But the need for the railroads to earn adequate revenue should not be viewed in a vacuum or elevated above the right of shippers to effective regulatory relief when charged unreasonably high rates."

The agricultural groups were responding to a July 28 proposal issued by the STB [STB Ex Parte No. 646 (Sub. No. 1)] that would amend its so-called "simplified guidelines" to address small rail rate cases. The agency was ordered to develop such guidelines by Congress in 1995 when it enacted legislation creating the STB as a successor to the former Interstate Commerce Commission. Congress mandated that such guidelines govern rate cases that are too expensive, given the value of the freight rate, for shippers to utilize a full "stand-alone" cost methodology normally required when challenging a rail freight rate.

The full stand-alone cost methodology in essence requires shippers to research

and document the cost of building an entire new railroad over the same route as the challenged rate. The stand-alone cost method is a prohibitively expensive exercise – typically costing between \$3.5 million to \$5 million – which has discouraged shippers from challenging unreasonable freight rates because the cost and time of bringing a case would far outweigh the potential financial returns.

The STB in 1996 issued what it termed “simplified guidelines” for addressing small rail rate cases. However, because of those guidelines’ complexities and costs, only one case has been brought challenging an unreasonable freight rate over the ensuing 10 years. That case ultimately was settled before litigation at the STB could be completed.

But the agricultural organizations said the STB’s proposed new revisions to its “simplified” guidelines are “highly restrictive” and would make regulatory relief to challenge unreasonable rates “virtually non-existent” for all but a few facilities shipping “miniscule” volumes of grain and grain products.

The STB’s new proposal would retain three “benchmarks” for categorizing rate cases under its “simplified guidelines,” with eligibility criteria determined based upon the “maximum value of the case.” Under the STB proposal, the maximum value of the case would be equal to the challenged rail rate minus 180 percent of variable costs (which is the statutory threshold for challenging a freight rate established under the Staggers Rail Act of 1980), multiplied by five years of annual shipment volumes. Under the STB proposal, five years is the maximum duration that rate relief, if granted, would apply.

The STB proposed that the most expeditious process – in which the agency pledges to issue a decision within nine months (270 days) after a case is filed (not counting subsequent judicial appeals) – apply to shipments where the maximum value of the case is \$200,000 or less. If the maximum value of the case is between \$200,000 and \$3.5 million, the shipper would qualify for what the agency calls a “simplified stand-alone cost” procedure, which the STB states would take about 18 months to resolve. Shippers whose maximum value of the case exceeds \$3.5 million would not qualify for the simplified guidelines, and instead would need to bring any rate challenges under the full stand-alone cost methodology.

But in their statement, the agricultural organizations said the STB’s proposed new procedures would constitute a “barrier” that would deprive small agricultural shippers of meaningful access to challenge unreasonable freight rates. In calling on the STB to revise its proposal to remove inequities and unrealistic eligibility requirements, the agricultural organizations cited the following major defects:

- The agency’s proposed monetary limit of \$200,000 on the cumulative value of a rail rate case over five years would mean that most shippers of grain and grain products would be eligible to challenge an unreasonable rate on just a “miniscule” fraction of their traffic, and would have no legal or practical way to pursue redress for the vast majority of their affected shipments. The agricultural groups said that under the STB’s proposals, access to regulatory relief would be limited to shipments of 27 cars per year (assuming a successful challenge that results in a rate reduction of \$1,500 per car) up to a maximum of 1,400 cars per year (assuming a successful challenge results in a \$500 reduction per car). “The...eligibility limits are so completely unrealistic, attempting to overcome them will become the rule rather than the exception for grain and other shippers of small origin-destination volumes, adding complexities and costs,” the agricultural groups said.
- The STB’s proposed requirements to aggregate all shipments from a single facility do not recognize the multiple rates that may exist on a single shipment of agricultural products or the multiple carriers that may be involved in the movement. For instance, the agricultural groups noted that between any given origin and destination, there may be different rates that apply to single cars, multiple-car units (such as 26-car shipments), unit trains (75 to 110 cars or more) and private versus rail-owned cars, as well as an interchange of the shipment to a different carrier than the one whose rate is being challenged.

- The STB's procedures would require a shipper to conduct a revenue-to-variable cost analysis of all of its traffic to determine whether it would be eligible to file a rate challenge on just a portion of its shipments.
- Because they are patterned after the agency's "stand-alone" cost methodology, the STB's proposed "simplified" guidelines are incompatible with the varying volumes and diverse traffic patterns that characterize agricultural shipments. The groups pointed out that volumes of commodities and products shipped from agricultural facilities can vary dramatically from year-to-year, dependent upon shifts in cropping patterns, changes in livestock and poultry production, weather-related impacts on yields and animal numbers, and fluctuations in domestic and export market demand. Similarly, shipment destinations vary based upon market demand.
- The STB proposal would prohibit shippers from bringing another rate challenge against the same carrier for two years if they succeed in reducing rates by \$100,000 or more through a successful challenge against that same carrier. In addition, the organizations noted that if a shipper succeeds in obtaining a reduction on some rail rates at a particular facility, but is barred from seeking similar relief in rates applied to other commodities or shipments at the same facility, the carrier would be able to raise rates on the traffic immune from further rate challenges as a way to recoup the revenues subject to the successful rate challenge.
- The STB proposal vastly underestimates – in some cases by up to ten-fold – the cost that shippers would incur in bringing a rate challenge under the "simplified" procedures. A small shipper likely would consider rate challenges of only a "very narrow slice" of its traffic, "if any at all," the agricultural groups said, given the costs of bringing a case compared to the: 1) level of rate that would be challenged; 2) the potential chances of success; and 3) the level of rate reduction that might be achieved. Even under the most optimistic scenarios analyzed, the agricultural groups said that it would not be cost effective to challenge approximately two-thirds of the range of shipment volumes that likely would be eligible for rate challenges under the STB's "simplified" guidelines.

Indeed, the agricultural groups noted that the STB's own proposal states that regulatory relief to challenge unreasonable rail rates would be limited to a small percentage of a carrier's traffic.

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**Agricultural Organizations Signing Joint Statement
to Surface Transportation Board**

The following national and state agricultural organizations were signatories to the statement to the federal Surface Transportation Board urging changes to its proposed "simplified" standards for rail rate cases:

National Organizations:

National Grain and Feed Association

National Oilseed Processors Association

Corn Refiners Association

North American Millers Association

National Association of Wheat Growers

American Farm Bureau Federation

American Soybean Association

National Corn Growers Association

National Farmers Union

USA Rice Federation

National Sorghum Producers

National Barley Growers

National Council of Farmer Cooperatives

Renewable Fuels Association

Agricultural Retailers Association

State and Regional Organizations:

Agribusiness Association of Iowa

California Grain and Feed Association

Colorado Wheat Administrative Committee

Grain and Feed Association of Illinois

Idaho Barley Commission

Idaho Wheat Commission

Indiana Grain and Feed Association

Iowa Soybean Association

Kansas Grain and Feed Association

Michigan Agribusiness Association

Michigan Bean Shippers

Minnesota Grain and Feed Association

Missouri Ag Industries Council

Montana Wheat and Barley Commission

Nebraska Grain and Feed Association

North Dakota Grain Dealers Association

Oklahoma Grain and Feed Association

Oklahoma Wheat Commission

Ohio Agribusiness Association

Pacific Egg and Poultry Association

South Dakota Wheat Commission

Texas Grain and Feed Association

Texas Wheat Producers Board

Washington Wheat Commission

Wisconsin Agri-Service Association

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DATE: 12/13/2006

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TO: Honorable Chip Nottingham
Surface Transportation Board

FAX: (202) 565-9013

FROM: Edward R. Hamberger

MESSAGE: Letter attached.

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