

**Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423**

STB EX-PARTE 677

COMMON CARRIER OBLIGATION OF RAILROADS

**COMMENTS SUBMITTED BY
BARILLA AMERICA, INC.**

My name is Sandy Evett. I am Vice President, Logistics and Customer Service for Barilla America, Inc. Headquartered in Bannockburn, Illinois, Barilla America, Inc. (Barilla) is the U.S.-based division of the Barilla Group, Italy's largest food producer. Barilla is the number one brand of pasta in the U.S., and we continue to grow market share.

We commend the Board for initiating this proceeding and the opportunity to present our views.

As you know, since the passage of the Staggers Rail Act of 1980, the business landscape of the rail industry has changed significantly due to mergers and rationalization of the U.S. rail system. The number of Class I railroads consolidated from 22 companies in 1980 down to only seven in 2001. Citing capacity issues, all of the Class I railroads have changed their business models in a fashion that limits, and oftentimes attempts to eliminate, their common carrier obligation, in favor of placing ever-increasing burdens and restrictions on their shippers. Consequently, the STB's confirmation of the continued existence of a

common carrier obligation on the part of the railroads, and a corresponding definition of the scope and components of that obligation, is vitally important to Barilla and other customers that rely on rail transportation.

Barilla owns manufacturing and distribution facilities at Ames, IA and Avon, NY. The Ames, IA facility produces hundreds of thousands of pounds of pasta daily and is served by the Union Pacific Railroad (UP) exclusively.¹ Our inbound wheat originates from growing areas in Arizona, California, Idaho, Montana, North Dakota and Canada. Until recently, our inbound wheat shipments (as well as the shipments received by many other wheat consumers) moved in 25-car blocks. UP has now eliminated its 25-car rates, and has mandated that these wheat shipments move either in unit trains of 75 cars or at substantially higher rates in single car shipments.

Many of our wheat suppliers have rail trackage infrastructure at their facilities only capable of loading 25-car units or less. By the same token, many consignees in the United States only have 25-car "spots" at their receiving facilities. Wheat, unlike corn, has traditionally moved in smaller units such as 25 cars. Thus, Union Pacific is not serving the wheat market, but rather creating the wheat market, by effectively forcing shippers and receivers to spend millions of dollars in additional rail infrastructure or, alternatively, to either exit the market or incur substantially higher single-car transportation costs. As a result, our wheat suppliers are faced with an untenable "Hobson's choice" – either invest millions of dollars of capital for expansion of rail infrastructure to accommodate 75-car unit

¹ The Avon, NY facility was constructed and became operational in the summer of 2007, and is served by the Livonia, Avon & Lakeville shortline railroad.

trains at their loading facilities or become noncompetitive and lose market share. Inevitably, our transportation and commodity costs will constrain our ability to remain competitive in the marketplace.

UP's handling of the 75-car versus 25-car unit train issue is indicative of a broader trend in which carriers, and particularly the Class I carriers, have become market makers instead of market service providers. They handle the traffic that they want to handle, and de-market the traffic they are not interested in handling. This, effectively, is an erosion of their common carrier obligation.

A second area of substantial concern is the calculated manner in which Class I's can manipulate the usage of contract rates versus regulated rates to evade common carrier obligations. The Board is well aware that the issue of what constitutes a "contract" has recently come to the forefront, and it has been attempting to address that issue in other proceedings. However, perhaps the Board is not aware of the ancillary effects of this issue on the Class I railroads' perception of their common carrier obligation.

Class I railroads have the ability to choose whether their rates are provided as regulated rates or contract rates. Make no mistake - smaller shippers on lines served by one carrier do not have the "arms length" ability to make that choice. Typically, the contract rates are lower than the regulated "tariff" rates. But this comes with a steep price - the Class I's do not believe that they have any common carrier obligation with respect to movement of contract shipments. Similarly, and perhaps more disturbingly, the Class I's have taken the position that they have no common carrier obligation with respect to the movement of exempt commodities, regardless of whether the rates are included in contracts or not. The traditional

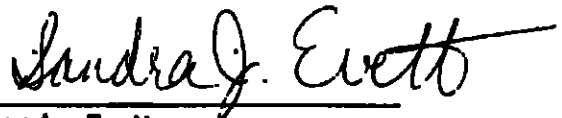
common carrier concept of "reasonable service upon reasonable demand" is virtually non-existent for small shippers where contract and exempt rates are concerned. This cannot have been what Congress, the Interstate Commerce Commission or the Surface Transportation Board intended during the course of deregulation since the Staggers Act, and we urge the Board to take a close look at the scope of carriers' (and particularly Class I carriers') common carrier obligations for movement of contract and exempt traffic.

We believe the common carrier obligation applies to all shipments, whether covered by tariff, exempt quote, or "unilateral" (non-arms length) contract. We request the Board's confirmation of this point of view.

Barilla has two major concerns, as follows:

1. We would like the Board to clarify and define what is the common carrier obligation for traffic moving under "unilateral" contracts or exempt quotes. We also have concerns that the railroads in general have converted some public tariffs to private tariffs and considered them to be contracts and therefore exempt from common carrier obligations.
2. What is the Board's view of railroads forcing rail infrastructure investments onto shippers by increasing the spread between unit train and single car rates?

Respectfully submitted,

By: 

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