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EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36609

**FOSTER POULTRY FARMS – *EX PARTE* PETITION
FOR EMERGENCY SERVICE ORDER**

MOTION TO EXTEND EMERGENCY SERVICE ORDER

On June 17, 2022 the Surface Transportation Board (“Board” or “STB”) determined, pursuant to 49 U.S.C. §11123, that an emergency situation existed concerning the rail service of Union Pacific Railroad Company (“UP”) to the facilities of Foster Poultry Farms (“Foster Farms”) in Turlock and Traver, California. The Board issued an emergency service order (“ESO”) directing UP to take certain measures to try to alleviate that emergency. Under 49 U.S.C. §11123(c)(1), such orders remain in place for 30 days unless they are extended “if the Board finds that a transportation emergency described in subsection (a) continues to exist.” If the Board so finds, then the initial order can be extended up to 240 days beyond the first 30-day period. The initial 30-day period for the ESO in this proceeding will end on July 17, 2022. For the reasons set forth below Foster Farms respectfully requests that the Board extend the ESO for an additional 90 days.

A. Background

1. The ESO ordered UP “to perform on its specific commitments of service as to FR11, FR12, FR14, and FR15 destined for the Turlock and Traver facilities, as explained in the verified statement of [Bradley] Moore, to the greatest extent possible.”¹
2. The Board did not define UP’s “specific commitments of service” in the ESO, but the decision referenced UP’s statements in its Reply to the *Ex Parte* Petition that UP would improve service to Foster Farms by (1) moving an additional train into service, (2) prioritizing crews and locomotives for Foster Farms’ service, (3) providing the STB with daily data specific to Foster Farms’ service; and (4) participating in weekly technical conferences between the parties and OPAGAC.²
3. On June 18, 2022 UP began supplying the Board with daily status reports of its service for loaded and empty trainsets to the two facilities and it began complying with the ESO.
4. On July 1, 2022, the Board issued a second decision in which it concluded that “the dire emergency . . . has been mitigated, but Foster Farms’ stocks are still not fully replenished, and it is still at risk if service were to falter.” Having reached this conclusion, the Board found that “continued oversight of UP’s service to Foster Farms under 11123 is appropriate.”³
5. The Board confirmed that the ESO would continue for 30 days – to July 17, 2022 – and that for the remainder of the 30-day period “UP is directed to carry out its specific commitments of service for loaded and empty train sets serving [the Turlock and Traver] facilities as set out in UP’s daily status reports, to the greatest extent possible.”⁴

¹ June 17 Decision at 2.

² *Id.* at 2.

³ July 1 Decision at 3.

⁴ *Id.*

6. The Board also directed UP to “keep the Board informed through weekly technical conferences with OPAGAC and filing daily status reports to the agency.”⁵
7. UP has continued to provide daily status reports to the agency, and the parties held their first technical conference with STB staff on Monday, July 11, 2022. Another is scheduled for Monday, July 18, 2022.
8. UP has, for the most part, met the schedules for trains FR11, FR12, FR14, and FR15 set out in the daily status reports, which reports are also provided to Foster Farms. As a result, the corn stocks at the Traver and Turlock facilities are replenished, and UP has achieved an average cycle of between 10-11 days per train, which is comparable to pre-emergency levels. Additional unit trains are no longer needed to replenish stocks and keep the facilities supplied with corn.
9. However, for the reasons explained in Foster Farms’ prior submittals in this proceeding, primarily the high consumption rates of the huge numbers of livestock dependent on feed processed from the corn delivered by UP, Foster Farms is still at risk if UP’s service begins to falter. Foster Farms believes that reductions in service are a distinct possibility over the next few months primarily due to uncertainty over whether UP has sufficient crews and other employees to maintain its current service levels to Foster Farms without continued Board oversight.
10. This is because (1) Foster Farms understands UP has been pulling crews from other trains to ensure compliance with the ESO; (2) UP has been using 46 “borrow out” employees to work at its Roseville Hub in California,⁶ meaning these employees can be recalled to their original workplace; (3) 34 new employees assigned to the Roseville Hub will not be available to assist

⁵ *Id.*

⁶ Moore Verified Statement at 2.

in UP's service to Foster Farms until at least August 15, 2022;⁷ and, most troubling, (4) there is the imminent possibility of a general nationwide railroad employee strike due to the inability of the railroads and their union employees to negotiate a new labor contract.⁸

B. Request for Relief

Based on the foregoing, Foster Farms asks the Board to conclude that there is sufficient remaining risk to Foster Farms, its livestock, and its customers that continued oversight of UP's service under §11123 is necessary and appropriate, and that accordingly the ESO should be extended for another 90 days. During this time, UP should be directed to continue to carry out its "specific commitments of service," but only to the extent necessary to maintain the current cycle times of 10-11 days UP has been achieving for trains F11, F12, F14, and F15. Foster Farms also requests that the parties and the Board staff continue to convene weekly technical conferences, but Foster Farms suggests that UP filing daily status reports with the STB may no longer be necessary since the information in them is being provided to Foster Farms and can be shared with the Board staff in the weekly technical conferences should they desire it.

Respectfully submitted,



Thomas W. Wilcox

Law Office of Thomas W. Wilcox, LLC

1629 K. Street NW, Suite 300

Washington, D.C. 20006

202-508-1065

tom@twilcoxlaw.com

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Attorney for Foster Poultry Farms

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Id.

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See, <https://www.chicagotribune.com/nation-world/ct-aud-nw-railroad-contract-talks-ap-20220714-fmnbhpskizhsdgoxqzh5b3pmq-story.html>

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July 2022, I served a copy of the foregoing Motion to Extend Emergency Service Order by electronic mail upon the counsel for Union Pacific Railroad Company listed on the official service list for Docket No. FD 36609.

Thomas W. Wilup
