

SERVICE DATE – JULY 20, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36609

FOSTER POULTRY FARMS—  
EX PARTE PETITION FOR EMERGENCY SERVICE ORDER

Digest:<sup>1</sup> This decision denies the request of Foster Poultry Farms to extend the Board’s emergency service order beyond the initial 30-day period but leaves the docket open for six months in the event that further action is necessary.

Decided: July 20, 2022

By decision served on June 17, 2022, the Board issued an order under 49 U.S.C. § 11123 directing Union Pacific Railroad Company (UP) to take certain actions with respect to unit trains of corn tendered to UP by or on behalf of Foster Poultry Farms (Foster Farms) destined for Foster Farms’ facilities in Traver and Turlock, Cal. Thereafter, following further submissions by Foster Farms and UP, the Board on July 1, 2022, found that continued oversight of UP’s service to Foster Farms under 49 U.S.C. § 11123 was appropriate. The Board directed UP, for the remainder of the 30-day emergency service period (through Sunday, July 17, 2022), to: continue to provide loaded and empty train sets serving Foster Farms’ Turlock and Traver facilities as set out in UP’s daily status reports, to the greatest extent possible; inform the Board and Foster Farms in writing of any need to deviate from its proposed schedules; participate in weekly technical conferences with Board’s Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC); and file daily status reports with the agency.

On July 15, 2022, Foster Farms filed a motion to extend the emergency service order for an additional 90 days. According to Foster Farms, its corn stocks at the Traver and Turlock facilities are replenished and UP has achieved an average cycle time of 10-11 days per train, “comparable to pre-emergency levels.” (Foster Farms Motion 3, July 15, 2022.) Foster Farms asserts, however, that it is still at risk of a reduction in service 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.” (*Id.*)

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

On July 15, 2022, UP replied in opposition to Foster Farms' motion to extend the emergency service order. UP asserts that it has addressed the emergency and notes that it is delivering more grain than Foster Farms can handle at the Traver and Turlock facilities. (UP Reply 1-2, July 15, 2022.) According to UP, it diverted three of its eleven most recent loaded shuttles to other locations because the Traver and Turlock facilities were full, and another loaded shuttle was parked at Turlock for nine days because the facility lacked capacity to unload the train. (Id.)

The Board has the authority to extend an emergency service order past the initial 30-day period under 49 U.S.C. § 11123 if it determines that a "transportation emergency described in subsection (a) continues to exist." 49 U.S.C. § 11123(c)(1). Here, however, the record does not show that the emergency that prompted the Board's initial action on June 17 continues to exist, as Foster Farms acknowledges that its corn stocks are replenished and UP has achieved an average cycle time of 10-11 days per train, comparable to pre-emergency levels. For that reason, extension of the emergency service order is not warranted, and Foster Farms' motion will be denied.

Nevertheless, the Board acknowledges Foster Farms' concerns about a possible recurrence of service problems and the uncertainty of whether UP has sufficient crews to continue to provide its current level of service. Therefore, this docket will remain open for six months. In the absence of any further Board order, the docket will automatically close six months from the service date of this decision. In the meantime, the Board encourages UP and Foster Farms to continue to work together and with OPAGAC, as appropriate, to avoid a repeat of the circumstances that led to the issuance of the June 17 emergency service order.

It is ordered:

1. Foster Farms' motion to extend the emergency service order is denied.
2. This decision is effective on its date of service.
3. Absent any further Board order, this docket will close on January 20, 2023.

By the Board, Board Members, Fuchs, Hedlund, Oberman, Primus, and Schultz.