

304446



LAW OFFICE OF THOMAS W. WILCOX, LLC
1629 K. STREET, NW SUITE 300
WASHINGTON, DC 20006

ENTERED
Office of Proceedings
April 26, 2022
Part of
Public Record

(202) 508-1065 (O)
(202) 365-8409 (C)
TOM@TWILCOXLAW.COM
WWW.TWILCOXLAW.COM

April 26, 2022

By E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: STB Docket No. EP 770 – *Urgent Issues in Freight Rail
Transportation*

Dear Ms. Brown:

Attached to this letter for inclusion in the record of this proceeding is the written version of the testimony provided orally by Mike Seyfert, President and CEO of The National Grain and Feed Association, at the hearing held today in the hearing room of the Surface Transportation Board.

Please do not hesitate to call me if you have any questions.

Sincerely,

Thomas W. Wilcox

*Transportation Counsel for The National
Grain and Feed Association*



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. EP 770

URGENT ISSUES IN FREIGHT RAIL TRANSPORTATION

TESTIMONY OF THE NATIONAL GRAIN AND FEED ASSOCIATION

Good morning, my name is Mike Seyfert, and I am the President and Chief Executive Officer of the National Grain and Feed Association. I am joined by Mr. Tom Wilcox, NGFA's outside transportation counsel, who will take part in the question-and-answer portion of this panel. I want to begin by commending Chairman Oberman and the Board for holding this hearing to learn about the causes of the current rail service challenges and to help find solutions.

The NGFA consists of more than 1,000 grain, feed, processing, exporting and other grain-related companies operating more than 8,000 facilities. Its membership includes grain elevators; feed and feed ingredient manufacturers; biofuels companies; grain and oilseed processors and millers; exporters; livestock and poultry integrators; and associated firms that provide goods and services to the nation's grain, feed, and processing industry.

The NGFA's wide-ranging membership is proud to partner with the railroad industry on almost 15 percent of total U.S. carloads, consisting annually of about 4 million carloads of grain and oilseeds, and related production inputs and products. It is a partnership critical to the U.S.



agricultural economy and one we value.

This past November NGFA celebrated its 125th anniversary. NGFA was founded on five key principles, one of which was improved and reliable rail service. The rail and grain and feed industries have changed considerably over the last 125 years, but the importance of the relationship has not. I expect this partnership to remain in place another 125 years from now. Therefore, solutions to the current rail service challenges should be crafted with the long term in mind.

As stated in the NGFA's March 24 letter to Chairman Oberman, the NGFA's preference is to seek commercial solutions between individual rail customers and their rail carriers. However, the recent rail service challenges impacting entire regions of the country have led us to the Board to seek help.

The Agricultural Transportation Working Group (ATWG) also sent a letter to the Board on April 21 signed by 33 national-level agricultural organizations representing producers and agribusiness. The letter highlighted the current inability of several Class I carriers to provide reliable rail service and noted the impact this can have on both producers and consumers. The letter goes on to say that the mismatch between the importance of reliable and cost-effective freight rail transportation to our nation's economy and the lack of effective competition between the Class I railroads remains of great concern to the ATWG members.

When you consider the domestic and global situations today, the movement of NGFA members' commodities and products perhaps never has been more important. Almost every shipment made by an NGFA member via rail will be used for either human food, animal food or fuel production in the domestic and international markets.

The challenges NGFA members face are multi-layered. Some members have experienced doubled trip times, such as trips from the Midwest to the West Coast taking 20 days when they



used to take 10 days. One of the primary reasons for the additional trip time is excessive dwell time at origin. We have reports of trains sitting for more than 10 days, when it is customary to have the trains pulled the following day after loading. Some NGFA members last week reported dwell times double what they were in March and triple what they experienced in February. *Trains Magazine* reported that during the week of March 15 more than 6,500 grain cars in North Dakota and more than 1,500 in Nebraska were more than 11 days behind schedule.

We are aware of origin grain elevators being restricted on their loadouts because loaded trains are occupying their rail sidings. There are instances of origin grain elevators needing to turn away grain sales from farmers because they are full. Some NGFA member companies have put grain on the ground to keep taking deliveries from producers.

Feed mills and integrated livestock and poultry operations have experienced instances in which trains have not arrived, and scheduled feed deliveries have been unable to be made to producers. At grain export destinations, vessels wait to be loaded due to delayed train delivery, and while they wait the grain exporter pays demurrage charges to the shipping company. But the railroad pays no demurrage to the exporter for these delays.

Grain processors, such as flour mills, crushing and biofuels facilities, have experienced rail challenges on the inbound and outbound. On inbound, they have been run short on raw agricultural commodities and have shut down operations. On the outbound their sidings have become full of loaded railcars. Due to their sidings becoming full, they have had to shut down operations due to having no place to load empty rail cars.

As a result of the prolonged trip times, shippers and receivers have booked additional freight in an attempt to move enough volume to keep their operations running. This additional freight from the secondary rail freight market has come at a very high price and is not sustainable



in the long run. NGFA members have reported paying in excess of \$500,000 in additional charges per substitute shuttle in the secondary market.

Many NGFA members have a daily risk of slowing or shutting down operations due to reduced and inconsistent rail service. Some individual NGFA member companies report losses and increased costs in the tens of millions of dollars and lost or reduced operating days totaling weeks. Based on reports from members, we conservatively estimate the combined costs to the grain industry due to lost revenues and additional freight expenses in the first quarter of 2022 to be over \$100 million.

Depending on the market position of the grain industry participant, these extra transportation costs are either borne by the participant, reflected in the grain basis paid to the farmer, or passed onto the consumer. Not one of these rail service challenges is beneficial for individual Americans or the U.S. or North American economies.

What caused these problems and how do we address them?

Our view is that the carriers shed a large percentage of their employees over the past five years and now do not have enough rail workers to service freight demand. These reductions in force have been exacerbated by COVID. We also believe lack of power issues either due to maintenance issues, attrition or delayed intervals are adding to the problems. These situations apply to the majority of Class I carriers, but we would like to provide credit to those rail carriers that are currently performing and handling the freight demand that has largely returned to pre-pandemic levels.

We are aware that many carriers are projecting year-over-year growth in total carloads in 2022, which will approach 2019 levels. However, it is important to note there are fewer grain exports shipping out of the PNW this spring than at the same time last year. Also, there is less



grain going through the PNW ports than before the trade war with China. I bring this to your attention to let you know the rail service challenges are not due to increased rail service demand from grain.

Due to the insufficient number of employees to handle the additional volumes of non-agricultural products, we recommend the Board request from the rail carriers the targeted number of employees they need to hire to meet the 2022 demand. If the number is short of 2019 levels, we ask the Board to inquire why the rail carriers believe they can handle higher volumes with fewer employees. Once it is known how many employees the rail carriers intend to hire, we recommend the Board require regular reporting on the number of employees they have hired, the number of employees going through training, when the newly trained employees are projected to be able to independently operate and repair trains, and lastly, the number of employees that have quit or retired.

NGFA members understand the employment challenges brought by COVID – every employer is facing similar challenges. The difference is that when NGFA members cannot load a train because a crew is out with COVID, they will be charged demurrage by the rail line and if they cannot unload a train due to COVID, they will pay demurrage and face the risk of penalties or loss of contracts with their own customer. However, if the railroad cannot deliver or move a train due to COVID – or any other reason – NGFA members cannot charge and are not entitled to any demurrage from the railroad.

This leads to several other recommendations. In addition to NGFA's recommendations to focus on rail employment, we urge the Board to implement the following policy changes to help reduce rail service challenges now and in the future:

The NGFA believes utilizing the same demurrage concepts that railroads use to incentivize

their customers would help prevent rail service challenges in the future. When shippers and receivers do not load a train within the required time, usually within a day, they pay demurrage fees to rail carriers. As a result, shippers and receivers pay extra wages to ensure they have enough labor to load and unload trains quickly. The addition of demurrage fees would increase the resolve of the railroads to ensure they move trains faster.

The NGFA appreciates the Board's recent decision to accept public comments on the petition filed by NGFA and several other associations in Docket No. EP 768 seeking the adoption of rules to permit rail customers to levy financial penalties on railroads for their inefficient use of private railcars. The NGFA strongly urges the Board also to permit rail customers to charge railroads demurrage when inadequate rail service is provided using carrier-provided rail cars, which make up a large percentage of the rail cars used to haul grain. This may seem like a major policy change, but this recommendation mirrors the policy employed by rail carriers toward their customers.

The NGFA also urges the Board to expeditiously conclude its work in Docket No. EP 711 for the purpose of establishing reciprocal switching rules that enable the creation of rail-to-rail competition at qualifying interchanges between carriers. Recently, our members have told us the ability to interchange trains would help their operations stay running.

The NGFA commends the Board for seeking comments last December on metrics to measure rail service and urges the Board to implement the additional data reporting as soon as practicable. The NGFA believes rail service will improve through additional data reporting, such as first-mile, last-mile rail service reporting. Indeed, we anticipate that many of the railroads will discuss velocity numbers in their testimony. But the real issue is how long it takes to move the trains in that first and last mile of service. When is the train in place for loading or unloading and

when is it hauled away? Is it a matter of hours or days?

There are many contributing factors to the first and last mile service challenges, such as the lack of adequate crews, lack of locomotives, bunching of cars and trains, lack of any financial penalties for poor service, inadequate communication, and lack of market constraints such as competition that would incentivize railroads to provide better service to their customers. These factors enable rail carriers to reduce assets and crews to maximize operating ratios at the expense of predictable, reliable service and efficient use of shipper assets. The present lack of transparency regarding the specific factors that cause first mile, last mile service breakdowns help to insulate rail carriers from Board oversight and responsibility for harm to their customers.

The NGFA recommends expediting the additional first mile, last mile data reporting requirements and adding trip plan reporting. NGFA also recommends requiring reports to the Board and directly to individual shippers. This data would help shippers and receivers more efficiently plan operations and more accurately gauge when contingency plans are needed.

We also encourage the Board to develop guidance on the Board's expectations for rail carriers in meeting their statutory obligation to provide service upon reasonable request. Exactly what is meant by the "common carrier obligation" has long been undefined. The service issues highlighted by NGFA members and others testifying today indicate the time has come to put real meaning in that definition.

Additionally, we believe some rail service challenges can be forestalled by requiring all the Class I railroads to develop annual rail service assurance plans, which will provide a basis for the Board and industry stakeholders to conduct annual assessments of intended service versus actual service, and to identify and address potential issues that otherwise may result in future service deficiencies.



I want to thank the Board for the recent announcement to begin a rulemaking on emergency service orders and to encourage the Board to follow it up with other announcements to help improve rail service. The emergency service order rulemaking has the potential to help particularly difficult, individual situations.

Finally, NGFA recognizes these are not challenges with easy answers, and there is not a single, individual tool in the toolbox that can solve them all. We encourage the STB to use all the tools available to you to improve service. If there are tools you need that you do not have, we encourage you to make that known to the Congress and the appropriate committees of jurisdiction.

Mr. Chairman and members of the board, thank you for your time and attention today and for holding this hearing on these critical issues. The more than 1,000 members of NGFA thank you. I respectfully request that my full prepared statement be included as part of the record. Tom and I would be happy to answer any questions you may have.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of April, 2022 a copy of the foregoing was served on each Party of Record listed on the official Service List for EP 770.

Thomas W. Wilup
