

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 699
ASSESSMENT OF MEDIATION AND ARBITRATION PROCEDURES

COMMENTS OF THE
U.S. DEPARTMENT OF AGRICULTURE

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AUTHORITY AND INTEREST

The Secretary of Agriculture is charged with the responsibility under the Agricultural Adjustment Act of 1938 and the Agricultural Marketing Act of 1946 to represent the interests of agricultural producers and shippers in improving transportation services and facilities by, among other things, initiating and participating in Surface Transportation Board (Board) proceedings involving rates, charges, tariffs, practices, and services.

Agricultural products are a significant portion of total U.S. rail traffic. During 2009, agricultural and agricultural-related products comprised nearly 20 percent of all rail movements—404 million tons.¹ This includes 152 million tons of grains and oilseeds, 131 million tons of food and food products, and 19 million tons of agricultural chemicals.

The ability to appeal rail rates and practices is important to agricultural shippers and producers. Agricultural producers typically receive a price for their products which is net of transportation and some are dependent upon rail transportation to move those products to international and domestic markets.

COMMENTS

The Department of Agriculture (USDA) thanks the Board for holding this proceeding to allow interested parties to comment regarding the Board's mediation and arbitration procedures.

The Board currently requires mediation for all rate cases and encourages mediation for other disputes. Although either party can decide not to accept an unfavorable outcome, mediation has been effective in resolving disputes between railroads and shippers. Although mediation is relatively cheap, it requires a Board-

¹ Association of American Railroads, Freight Commodity Statistics, 2009.

appointed mediator that understands the railroad system. One of the advantages of the Board providing a mediator is that the mediator can communicate to each party what the Board's position would likely be regarding the issues in the case, often resulting in quicker resolution of the issues.

Although arbitration at times can be the lower cost alternative, it is not always cheaper, simpler, and faster than litigation. Arbitration requires a higher level of commitment from each party because once arbitration is chosen, both parties must comply with the arbitrator's decision. The arbitrator or panel of arbitrators must understand the railroad industry and also the industry of the complainant in order to make good decisions. In addition, the arbitrator or panel must be trusted to deliver an impartial decision. Arbitration can occasionally result in outcomes inconsistent with established precedent and, absent fraud or bias, it is difficult to get a court to overturn these decisions.

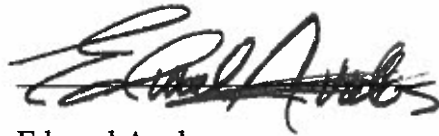
The Board has procedures in place to handle voluntary arbitration through a Board-approved arbitrator. Although these procedures exist, shippers have not used the Board's arbitration procedures.

Shippers have told USDA that they are reluctant to use the Board's arbitration rules because there is only one arbitrator; this arbitrator understands the rail industry, but is usually not conversant with the shipper industry.

Another factor hindering the willingness of shippers to use the Board's arbitration system is that all arbitration decisions must be consistent with past Board decisions. This makes the Board a de-facto reviewer of any arbitration decision, which adds another layer of complexity to the arbitration process.

USDA recommends that if arbitration is voluntarily used, then the panel should have a balanced panel of arbitrators, and entities should have the ability to appeal. Additionally, such decisions made by the arbitrators should be included on its website to improve transparency and knowledge to the market.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Edward Avalos', with a stylized, cursive script.

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