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Testimony of The Fertilizer Institute – Docket EP 761

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UP v. STB, 202 F.3d at 342 (DC Cir. 2000)

The Great Northern holding—and the broader principle that the reasonableness of rates is to be assessed on a through basis—was based on an understanding that “[t]he shipper’s only interest is that the charge shall be reasonable as a whole.”

This is no longer the case. By permitting a shipper to enter into contracts that are beyond review of the Board, the Staggers Act entitles a contracting shipper to—as FMC puts it—“the benefit of its bargain.” Were its position to prevail, Union Pacific would be in a position to recover for itself the “benefit” of FMC’s bargain with CSX, as it could set a rate that allowed it to obtain the difference between a reasonable through rate and the FMC-CSX contract price. (internal citations omitted)

TFI Proposal

- “...the Board decides that the proposed through route is needed to provide adequate, and more efficient or economic transportation” 49 USC 10705(a)(2)(C).
- Four Factors
 - ▣ The carrier is revenue-adequate
 - ▣ No other transportation mode provides effective competition over the route
 - ▣ Bottleneck rates are required only to an existing interchange
 - ▣ The interchange must be operationally feasible and safe for the traffic that would use it