



Surface Transportation Board
Washington, D.C. 20423-0001

May 31, 2023

The Honorable Thomas J. Vilsack, Secretary
United States Department of Agriculture
Whitten Building, Room 116A
Washington, DC 20250

Dear Secretary Vilsack:

Thank you for your letter addressing freight rail service challenges and the impacts on agricultural shippers. We share your concerns about the impact unreliable service can have on agricultural industries and communities that depend upon consistent freight rail service. As you noted, the Board has been hard at work addressing rail service shortfalls, and several important matters remain under careful consideration by the Board.

As you are aware, the Board held a public hearing addressing rail service problems on April 26 and 27, 2022 in Urgent Issues in Freight Rail Service, Docket No. EP 770. During the hearing, the Board heard extensive testimony on severe rail service issues reported by a wide range of witnesses including agricultural shippers, as well as government officials, rail labor, and rail experts. The Board appreciated the testimony delivered by Deputy Secretary Bronaugh during that hearing. Following the hearing, the Board issued a decision requiring all Class I railroads to submit information on rail service, performance, and employment in Docket No. EP 770 (Sub-No. 1). The Board required BNSF, CSX, Norfolk Southern, and Union Pacific (UP) to submit service recovery plans, progress reports, and historical data, and to participate in biweekly conference calls with Board staff. These measures have helped inform the Board's assessment of further actions warranted to address the service issues facing the rail industry and to promote industry-wide transparency, accountability, and improvements in rail service. On May 2, 2023, given the continued challenges in providing consistent rail service, the Board extended the temporary reporting period for Class I carriers to December 31, 2023, in Urgent Issues in Freight Rail Service – Railroad Reporting, Docket No. EP 770 (Sub-No. 1).

In addition, on April 22, 2022, the Board issued a proposed rule to improve its process to provide relief in times of emergency and to ease the burden on rail customers seeking such relief in Revisions to Regulations for Expedited Relief for Service Emergencies, Docket No. EP 762. The comment period for that proceeding has closed, and the Board expects to take further action on the proposed rule in July 2023. As you may know, on December 29, 2022, Foster Poultry Farms, located in California, filed a petition for emergency service with the Board as a result of continued deterioration in rail service from UP. Foster Poultry Farms – Ex Parte Petition for Emergency Service Order, Docket No. FD 36609. The Board issued a decision ordering UP to deliver specific train sets of animal feed to Foster Farms on a specified schedule, to the greatest

extent possible, in order to avert a potential significant loss of livestock. Previously, because of similar service issues affecting Foster Farms, the Board issued an order in June 2022 directing UP to adhere to specific service commitments and to report regularly to the Board.

As you also noted, the railroads have a common carrier obligation to provide transportation service upon reasonable request. The Board is considering a complaint concerning BNSF's common carrier obligation in one new matter, Navajo Transitional Energy Company, LLC – Complaint and Petition for Declaratory Order, Docket No. NOR 42179. The Board also is closely examining UP's use of embargoes and its relationship to statutory requirements, including the common carrier obligation. In response to UP's spike in the use of "congestion" embargoes, in December 2022, the Board held a two-day public hearing focusing on UP's routine use of embargoes in Oversight Hearing Pertaining to Union Pacific Railroad Company's Embargoes, Docket No. EP 772. The Board directed UP CEO Lance Fritz, and other top UP executives, to appear personally and provide detailed testimony on UP's decision-making process on determining whether to issue an embargo and the explanations for the dramatic increase in embargoes since 2017. During the hearing, the Board also received testimony from shippers and shipper associations who have been negatively impacted by UP's increased use of embargoes, and from railroad employees who offered accounts of embargo use from their perspective. Following the hearing, UP notified the Board that it was pausing any additional embargoes under its pipeline inventory management program in order to take a hard look at its use of embargoes. (See Letter from UP CEO Lance Fritz to Chairman Martin Oberman, December 16, 2022, in Docket No. EP 772). And more recently, UP notified the Board that it had ceased using the pipeline inventory management program altogether, and it outlined several other changes to further reduce the use of embargoes. (See Letter from UP Vice President Brad Moore, April 27, 2023, in Docket No. EP 772). On May 15, 2023, the Board issued a decision ordering UP to provide additional detailed information, documents, and data related to its use of embargoes by June 14, 2023.

As you also noted, in Reciprocal Switching, Docket No. EP 711 (Sub-No. 1), the Board is actively considering whether and how to allow a party to seek a reciprocal switching prescription that is either practicable and in the public interest or necessary to provide competitive rail service, in accordance with 49 U.S.C. § 11102(c)(1). The Board has concluded all hearings and *ex parte* meetings in this docket and expects to issue further action in August 2023.

In addition, in First-Mile/Last-Mile Service, Docket No. EP 767, the Board issued a decision seeking comments on issues regarding first-mile/last-mile (FMLM) rail service, particularly on whether additional metrics to measure such service might have utility that exceeds any associated burden. The Board has been carefully considering stakeholder comments and the interrelationship between this proceeding and the proceeding in Docket No. EP 770, Urgent Issues in Freight Rail Service, wherein as previously mentioned, the Board is continuing to collect data to assess the state of the freight rail network. The Board appreciates hearing your views about the potential need for more granular and geospatial FMLM data to improve visibility into regional service issues, particularly as they relate to the agricultural sector.

Finally, the Board is diligently examining the petition and the related public comments in Petition for Rulemaking to Adopt Rules Governing Private Railcar Use by Railroads, Docket No. EP 768.

The Board will continue to closely monitor the Nation's rail service and the progress made by the railroads, and is prepared to take further action, including increased data collection, as necessary. The Board also welcomes the opportunity to work collaboratively with USDA to help strengthen freight rail service for agricultural shippers and all rail users. A copy of your letter and this response has been placed on the Board's website as non-docketed public correspondence. If you or your staff have any questions, please contact Ms. Janie Sheng, Director of the Office of Public Assistance, Governmental Affairs, and Compliance, at 202-245-0238.

Sincerely,



Martin J. Oberman
Chairman



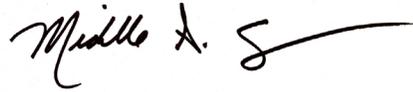
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