

July 20, 2021

The Honorable Martin J. Oberman  
Chairman  
Surface Transportation Board  
Washington, DC 20423

The Honorable Robert E. Primus  
Vice Chairman  
Surface Transportation Board  
Washington, DC 20423

The Honorable Ann D. Begeman  
Board Member  
Surface Transportation Board  
Washington, DC 20423

The Honorable Patrick J. Fuchs  
Board Member  
Surface Transportation Board  
Washington, DC 20423

The Honorable Michelle A. Schultz  
Board Member  
Surface Transportation Board  
Washington, DC 20423

*Via Electronic Mail Re: Executive Order on Promoting Competition in the American Economy*

Dear Chairman Oberman, Vice Chairman Primus and Board Members Begeman, Fuchs, and Schultz:

As you know, on July 9, 2021, President Biden signed an Executive Order encouraging the Surface Transportation Board to adopt certain initiatives to promote freight-rail competition. The Agricultural Transportation Working Group (ATWG) shares the President's desire for a more competitive rail industry and urges the Board to adopt the initiatives that the Executive Order identifies to enhance rail competition and prevent railroads from abusing their market dominance. We believe that enhanced competition is an important vehicle through which the Board can address pervasive challenges faced by rail shippers, including poor rail service, and unreasonable rail rates and practices.

The ATWG comprises the undersigned organizations that represent a diverse array of agricultural producers and agribusinesses that rely heavily on freight rail service. Formed in 2003, we provide a regular forum where these organizations can come together to discuss critical transportation-policy issues affecting U.S. agriculture. We continue to expand, as a growing number of agricultural interests recognize the importance of addressing transportation challenges.

Due to extensive consolidation in the railroad industry, many agricultural shippers do not have access to effective competition for their rail traffic. Over the past 40 years, railroad mergers have shrunk the number of Class I railroads from 33 to seven, and two major duopolies have formed in the eastern and western halves of the United States. While these mergers succeeded in rationalizing rail capacity, they increased railroad market power such that many shippers no

longer have access to competition necessary to promote efficient service, reasonable rates and charges, and fair practices.

Our members find that other transportation modes do not make up for the absence of rail-to-rail competition. While truck and water transportation are often viewed as potential competitors to rail, they have significant limitations that prevent them from providing effective competition on all but a narrow range of movements. Water transportation cannot compete with rail except for traffic moving between an origin and destination on a navigable waterway. Truck transportation is significantly less efficient than rail, making it uncompetitive except for short distances.

The absence of effective competition in the rail industry has a significant impact on prices for the agricultural industry. This lack of effective competition results in decreased farm-gate prices for crops in the regions that are dependent on rail service. The lack of effective rail competition also is reflected in increased crop-input and feedstock prices paid by farmers, livestock operations, poultry operations, biofuel operations, feed mills, food processors, and other agricultural operations that depend on rail service. For example, rail rates to ship anhydrous ammonia, which is a key ingredient for 75% of the essential fertilizers utilized by farmers, have increased over 200% in the past 20 years.<sup>1</sup>

The absence of effective rail competition also has led to poor rail service. In recent years, nearly every Class I rail carrier has attempted to reduce its operating ratio—a measure of profitability that compares operating expenses to revenues—by adopting operating strategies, like Precision Scheduled Railroading, that involve providing service with minimal trains and employees. The result has included multi-day delayed train starts, missed switches, extended transit time, excessive dwell, reduced velocity, and mishandled freight. Our collective members and associations have been in regular contact with the Board regarding these and other service problems that place considerable strain on the agricultural industry, including by causing agricultural shippers and receivers to shut down, slow down, reformulate products, and incur higher freight costs to transport agricultural products by truck. In some cases, shipping costs related to poor service, including curtailed production, amount to hundreds of thousands of dollars.

To address these competition issues and provide accessible remedies to shippers, the Executive Order identifies two initiatives that the Board can and should implement: complete a rulemaking proceeding to make reciprocal switching (also called “competitive switching”) more accessible; and adopt similar competitive access rules that prevent railroads from exploiting their bottlenecks to preclude competition on downstream route segments.

We urge the Board to implement reciprocal switching by issuing a final rule in Docket Ex Parte 711 (Sub-No. 1) (“EP 711”). Reciprocal switching is an important statutory mechanism for fostering rail competition because it enables a customer that is captive to a single rail carrier at

---

<sup>1</sup> Fertilizers are attributable to 50 percent of crop yields.

an origin or destination to access a competing carrier at the nearest interchange for a reasonable switch fee. This effectively creates two carrier competition at those locations that are physically captive to just one railroad. Reciprocal switching can be implemented in the United States in a practical way. In fact, it occurs today at several locations in the United States and is nearly universal throughout Canada (where it is called “interswitching”). Although reciprocal switching has been a statutory means to enhance competition for over 40 years, Board precedent has set the bar so high as to be effectively inaccessible. EP 711 would reverse that precedent by setting a new standard that conforms more closely to the language in the statute.

The Board has a full record upon which to issue a final rule in EP 711 to make reciprocal switching more accessible. As you know, shippers proposed competitive-switching reforms in a petition for rulemaking filed a decade ago and, in 2016, after obtaining extensive financial analyses from stakeholders on the effects of competitive switching upon the rail industry and holding hearings, the Board responded by issuing proposed rules in EP 711. Since then, the Board has received two rounds of extensive comments on its proposed rules and hosted subsequent ex parte meetings with stakeholders. Thus, there already exists a complete record to support the adoption of the reciprocal switching rules proposed in EP 711.

We also urge the Board to implement the Executive Order’s competitive-access initiative by focusing on making rate review more accessible for those shippers who will not benefit from reciprocal switching, including by finalizing the Board’s proposed rules under Docket Ex Parte No. 655 to create a Final Offer Rate Review process for small rail rate disputes. Challenging unreasonable rates at the Board has been a cumbersome and expensive process for over 40 years and it has only grown worse over time. Only one rail rate case for an agricultural commodity has been brought during that time, and it took 18 years to reach a final decision in that case. Agricultural shippers desperately need a workable and accessible rate review process, without which they are effectively precluded from bringing meritorious claims.

Consistent with this competitive-access initiative, we also urge the Board not to move the goalposts on Class I railroad revenue-adequacy determinations as part of Docket Ex Parte No. 766. In that docket, certain railroads are proposing changes to the Board’s revenue-adequacy methodology that would enable them to exploit the absence of effective rail competition to earn profit margins exceeding those of half the S&P 500—an index of top-performing and high-potential firms. Not only is this unnecessary for railroads to attract sufficient capital investment, but also it would make obtaining competitive access and unreasonable rate relief more difficult.

To maintain the ability of U.S. agriculture to remain competitive in a very dynamic domestic and world market and to be positioned to capture new market opportunities, the Board must address the serious issues posed by the lack of effective rail competition combined with a nebulous and oft-neglected common carrier obligation. The initiatives that the Executive Order outlines for the Board provide a framework to address these issues. Moreover, the Board can implement these initiatives quickly and effectively as outlined above. Pragmatic reforms to make the rail industry more competitive will strengthen this vital transportation sector, both to

the benefit of rail carriers and their customers. Ultimately, a strong, competitive rail industry is critical to the success of our members and the broader U.S. economy. Members of the ATWG stand ready to work with you and with rail carriers to implement pragmatic measures to promote rail industry competition.

Thank you for your consideration and please feel free to call on us with any comments or questions.

Sincerely,

The Agricultural Transportation Working Group

Agricultural Retailers Association  
Agricultural Transportation Coalition  
American Farm Bureau Federation  
American Feed Industry Association  
American Pulse Association  
American Soybean Association  
American Sugar Alliance  
Consumer Brands Association  
Corn Refiners Association  
Forest Resources Association  
Hardwood Federation  
National Association of State Departments of Agriculture  
National Association of Wheat Growers  
National Corn Growers Association  
National Cotton Council  
National Council of Farmer Cooperatives  
National Farmers Union  
National Grain and Feed Association  
National Grange  
National Milk Producers Federation  
National Oilseed Processors Association  
North American Millers' Association  
North American Renderers Association  
Pet Food Institute  
Specialty Soya & Grains Alliance  
The Fertilizer Institute  
United Fresh Produce Association  
USA Rice  
USA Dry Pea & Lentil Council  
U.S. Pea & Lentil Trade Association  
US Rice Producers Association  
U.S. Wheat Associates

cc: Brian Deese, Chair, White House Competition Council  
Tom Vilsack, Secretary of U.S. Department of Agriculture  
Katharine Ferguson, USDA Chief of Staff  
Dr. Seth Meyer, USDA Chief Economist