National Association of Wheat Growers
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February 14, 2022

Hon. Martin Oberman
Chairman
Surface Transportation Board

Hon. Robert Primus
Vice Chairman
Surface Transportation Board

Hon. Patrick Fuchs
Member
Surface Transportation Board

Hon. Michelle Schultz
Member
Surface Transportation Board

Hon. Karen Hedlund
Member
Surface Transportation Board

RE: Proposed Rule on Reciprocal Switching (Docket No. EP 711)

Dear Chairman Oberman, Vice Chairmen Primus, and Members, Fuchs, Schultz, and Hedlund:

The National Association of Wheat Growers (NAWG) would like to express their support for the Surface Transportation Board (STB) proposed new regulations allowing the Board to authoritatively require rail carriers to establish shipping systems under certain conditions. Established in 1950, NAWG is the primary representative in Washington, D.C. for wheat growers, representing 20 state wheat grower organizations.

NAWG works to promote policy efforts that create an environment that is conducive to the success of wheat farming in the United States. Wheat is heavily reliant on rail transportation to move the commodity across the US, meaning rail rates have a disparate impact on wheat shipper's, especially compared to other bulk US commodities due to the large percentage of production that is exported and major growing regions of wheat that are not generally adjacent to the Mississippi waterways. Distances from the central and northern plains wheat producing areas are far too great to truck wheat to export facilities making railroads a crucial and irreplaceable link in the wheat export logistics chain.

NAWG appreciates that the STB has an important oversight role in looking at the impact of freight rail policies on rail shippers and is encouraged the STB is seeking ways to improve the reciprocal switching remedy in line with the intent of Congress. NAWG urges the Board to breathe life into this remedy that has been essentially dormant for decades and to provide a method to counter the Class I railroads' unabated market power over wheat shippers.

NAWG has participated previously in STB proceedings regarding competition in the railroad industry, which is of huge importance to rail shippers of not only grain but oilseeds, feed, biofuels, and other grain products. In these proceedings, NAWG has voiced concern over decreased rail-to-rail competition for agricultural commodities and products. Agricultural commodity shipments are influenced heavily by fluctuating domestic and export market demand.

Wheat specifically is particularly susceptible to rising prices from rail companies thanks to the lack of alternatives in moving wheat to end users. Whereas other commodities have alternative purchase points, such as ethanol plants or animal feeding operations, thereby making trucking a legitimate alternative to rail, wheat primarily moves to flour mills or ports, which are usually farther away from their point of origin, leaving wheat shippers more reliant upon rail services. These inherent characteristics of the wheat industry, combined with today's concentrated rail industry and agricultural product shipments, makes competitive rail switching rules essential to efficiently supplying domestic and export markets.

Reciprocal switching allows shippers that are served by only one railroad to access the services of competing railroads, increasing the competition within that particular market. The STB has not enforced reciprocal switching on railroads since 1985. Since then, while rates are lower than in 1985, consolidation within the market has made real prices rise over the last two decades, particularly in wheat. The current rule allows for shippers to obtain reciprocal switching if they can prove that the switch is feasible and necessary to enhance competition.

The results of this increased dependance on rail for movement of wheat exports have been clear. Over the last decade rail rates have increased exponentially, and wheat continues to be charged higher rates than commodities with similar handling characteristics – even for identical hauls. In work conducted by U.S. What Associate's Transportation Working Group in 2020, quotes for rail service were collected from grain shippers for major US grain crops. These price indications were for the same origin/destination pairings and for the same dates of service. They documented the premium of between a 22% and 39% for wheat movements compared to corn in four major regions. These results were corroborated by a June 2017 study by the USDA's Agricultural Marketing Service which was able to find no underlying cause driving the increases in wheat rates. These premiums relative to other commodities clearly demonstrate the current market power of US railroads and the lack of any serious competition afforded to wheat shippers.

That unchecked market power has had serious implications for US wheat's competitive position compared to major world exporters, such as Canada. The Canadian comparison is particularly telling as the two-spring wheat and durum growing regions are similarly positioned in the interior of each country, with near identical distances to traverse to export facilities in each country, with differing government rail policies (including more favorable terms for reciprocal switching) being one of the only large differences in market position. However, despite the similarities, studies conducted by U.S. Wheat Associates have shown that similar origin to export point rail moves at the time in Canada were 30% below the US moves at the time.

Under the proposed rule, the STB would require the establishment of a switching arrangement when the switching arrangement was either practicable and in the public interest or was necessary to provide competitive rail service. The STB would also consider whether the benefits or a proposed arrangement would outweigh its potential detriments. These changes to the rule would not only protect the railroad's interest in terms of efficiencies and costs but would allow shippers access to new markets, increased competition, and better service.

The STB itself also states that the proposed regulation would not require reciprocal switching if the switch were not feasible, would be unsafe, or would hamper a carrier's ability to serve its customers. These stipulations implemented by the STB should satisfy many of the concerns carriers have with the proposed rule while still giving shippers the reasonable support they need not be constrained to a single carrier.

Further, when Congress enacted the Staggers Act of 1980, which largely deregulated the railroad industry, reciprocal switching was statutorily allowed with the intent of decreasing anticompetitive conduct. The standard that shippers are held to in order to participate in reciprocal switching is very difficult to meet. Proving that a shipper is engaged in anticompetitive behaviors can be costly and time consuming, which has ultimately led to very few reciprocal switching cases, despite its potential feasibility. When parties have the right to use a provision, but do not actively use it, that means that a provision is ineffective and needs to be updated to promote competition within the marketplace.

As has been demonstrated, wheat rail shippers have been adversely impacted by the lack of any options to obtain competitive rail access. Under the current process for the reciprocal switching remedy, Wheat shippers do not bring forward cases and are often forced to modify operations to their detriment because no other viable options are present. This results in negative impacts throughout the supply chain ultimately impacting not only wheat shippers, but their customers and consumers. With extensive coverage by multiple Class I railroads of the largest wheat growing areas of the US and a limited number of export facilities capable of handling bulk grain exports, the US wheat industry is particularly well-positioned to benefit from policies better enabling competitive switching.

The current rule allows rail carriers to effectively cut off existing access to markets through absolute closures of intersection points or by establishing switch charges beyond a reasonable level. The difficulties associated with bringing forth a reciprocal switching case have given rail carriers much pricing freedom on long-haul rates. Switching movements are critical to maintaining a national rail freight network and allowing the current freedom on switching prices threatens the competitive fabric of the nation's freight economy.

NAWG supports the proposed rule of establishing reciprocal switching arrangements in areas that are served by more than one carrier at reasonable market costs. Reciprocal switching would give freedom to all rail customers, including farmers, to choose the best carrier option suited for the individual. The proposal is an attempt to fashion a workable replacement to the existing rules and precedent governing reciprocal switching. Therefore, NAWG urges the Surface Transportation Board to make the decision that will provide shippers access to competitive rail services.

Respectfully submitted,

President David Milligan

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