

October 23, 2015

By E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Docket No. FD 35964: *American Chemistry Council, The Chlorine Institute, and The Fertilizer Institute – Petition for Declaratory Order – Positive Train Control*

Dear Ms. Brown:

Pursuant to the Decision served by the Board in the captioned proceeding on October 6, 2015, the undersigned agricultural producer, commodity and agribusiness organizations (“Interested Agricultural Parties”) hereby submit this reply in support of the Petition for Declaratory Order filed in this proceeding.

The Petitioners in this proceeding represent rail shippers of Toxic Inhalation Hazardous (“TIH”) commodities, and the specific action that prompted the filing of the Petition was that they “face a common threat if Class I railroads embargo TIH traffic due to their failure to comply with the PTC requirements of the Rail Safety Improvement Act (RSIA) of 2008.” Petition at 3. Accordingly, the Petition seeks a declaration from the Board that, if a Class I railroad fails to meet the December 31, 2015 deadline for implementing PTC, it still must continue to accept and transport TIH shipments over those lines pursuant to its common carrier obligation. *Id.* at 5.

As the Petition explains, anhydrous ammonia is a TIH commodity, and it accounts for 45 percent of rail TIH volumes. *Id.* at 23. It is the basic building block of all nitrogen fertilizers, and, therefore, is a critically important commodity to many of the Interested Agricultural Parties' members engaged in agricultural production and in providing farm supplies and inputs to farmer-customers. Accordingly, we concur with the Petition's underlying principle that Class I railroads do not have a legal right to unilaterally suspend their common carrier obligation to transport anhydrous ammonia because of their failure to comply with the PTC requirements of the RSIA.

In addition and importantly, however, the Interested Agricultural Parties note that some Class I railroads have gone beyond the implications for TIH and passenger traffic, and have taken the even broader position that their failure to comply with the PTC deadline can legally result in them halting *any* freight rail service on their systems, ostensibly including grains, oilseeds, grain products and other agricultural commodities, as well as other non-TIH shipments. Specifically, the September 9, 2015 letter from Michael J. Ward, Chairman and CEO of CSX Corporation, to Senator John Thune attached as Exhibit 3 to the Petition states in pertinent part that due to the comingling of CSX freight trains and commuter trains in certain major metropolitan areas, "CSX is seriously considering suspending freight operations over these lines. *This would be not only for TIH product but also for all goods moving to and from those regions.*" (Letter at 4, emphasis added). Given that the metropolitan areas mentioned in the letter include New York, Chicago, Boston, Miami and Orlando, the potential impact on the transportation of agricultural and food products, as well as on local economies, from this threatened suspension is enormous.

Similarly, in the September 9, 2015 letter from Carl Ice, President and CEO of BNSF Railway Company to Senator Thune, attached as Exhibit 4 to the Petition, Mr. Ice states that BNSF has adopted an interpretation of RSIA and the Federal Railroad Administration's ("FRA") implementing regulations as requiring PTC to be installed on all applicable tracks by the deadline "in order for *any train* to originate on such a line as of January 1, 2016." BNSF Letter at 2 (emphasis in original). According to a purported "plain reading of RSIA," BNSF maintains it may halt all freight traffic on lines where PTC is not fully installed and implemented as of January 1, 2016. *Id.* In 2014, BNSF handled nearly 1 million carloads of agricultural commodities, making it one of the nation's two largest rail transporters of agricultural commodities. As such, the suspension of all agricultural commodity traffic on BNSF on January 1, 2016 would be catastrophic, particularly given that it would occur on the heels of a near record 2015 harvest of corn and soybeans.

U.S. agriculture depends upon efficient and safe transportation involving all modes – rail, truck, barge and vessels – to move commodities to domestic and international customers. As such, the Interested Agricultural Parties are deeply concerned that actions by certain Class I carriers to unilaterally jettison their common carrier obligation would have devastating disruptive ripple effects on the rail transportation network as a whole, resulting in severe service disruptions and inefficiencies reminiscent of, or even exceeding, what U.S. agriculture experienced in the fall and winter of 2013-14.

The notion that failure to comply with the RSIA PTC deadline gives a Class I railroad the legal right to suspend its common carrier obligation to transport not only the passenger traffic

and TIH commodities that the PTC requirement was enacted to protect, but also *any and all* freight rail transportation, regardless of the nature of the commodity, is absurd on its face. As noted in the Petition, the Federal Railroad Administration (FRA) itself stated that while the “STB is the agency ultimately responsible for enforcement of the common carrier obligation..., FRA does not view the requirement to install PTC systems on certain rail lines as affecting the common carrier obligation in any way.” *Id.* at 14.

Nevertheless, the two previously cited Class I railroads have raised the specter of such a possibility occurring at the end of this year, if not before. Still other Class I carriers are reserving judgment, creating more logistical uncertainties and alarm among shippers and receivers, particularly those captive for service to a single railroad.

Finally, the Interested Agricultural Parties concur with the Petitioners that the role of the Board is to protect the greater public interest by enforcing the common carrier obligation, which railroads must not be allowed to undermine or negate based upon their own violation of a federal law. Otherwise, a railroad could seek to avoid its common carrier obligation by simply choosing not to comply with applicable rail safety laws. *Id.* at 28.

For these reasons, the undersigned Interested Agricultural Parties submit that the STB should address this issue in any declaratory order it issues in this proceeding, namely, by unequivocally removing any uncertainty that the railroads’ common carrier obligation codified at 49 U.S.C. § 11101(a) continues after December 31, 2015, irrespective of whether affected carriers have installed PTC, and that the common carrier obligation includes their obligation to

transport *all* freight commodities, in addition to the TIH materials that are the primary subject of the Petition.

Respectfully submitted,

**Agribusiness Association of Iowa
Agribusiness Council of Indiana
Agricultural Retailers Association
American Farm Bureau Federation
American Soybean Association
Grain and Feed Association of Illinois
Institute of Shortening and Edible Oils**

**Kansas Grain and Feed Association
Meat Import Council of America
Michigan Agri-Business Association
Michigan Bean Shippers
Minnesota Grain and Feed Association
Missouri Agribusiness Association
Montana Agricultural Business Association**

**Montana Grain Elevator Association
National Barley Growers Association
National Cattlemen's Beef Association
National Farmers Union
National Grain and Feed Association
National Oilseed Processors Association
National Pasta Association**

**National Pork Producers Council
National Sunflower Association
Nebraska Grain and Feed Association
North American Meat Institute
North American Millers' Association
North Dakota Grain Dealers Association
Ohio AgriBusiness Association**

**Oklahoma Grain and Feed Association
South Dakota Grain and Feed Association
U.S. Canola Association
United States Hide, Skin and Leather Association**