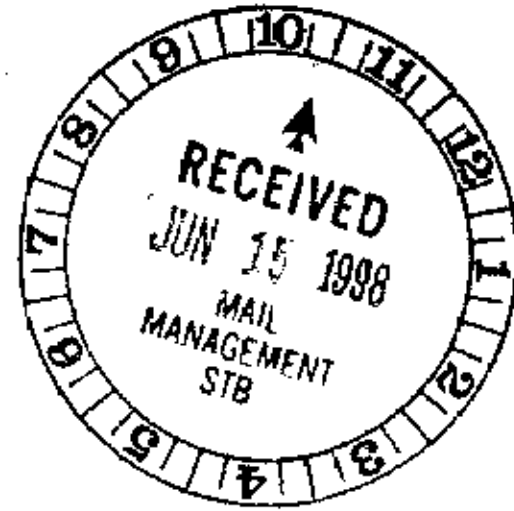




BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 628
EXPEDITED RELIEF FOR SERVICE INADEQUACIES

COMMENTS OF THE
DEPARTMENT OF AGRICULTURE

Michael V. Dunn
Assistant Secretary
Marketing and Regulatory Programs
U.S. Department of Agriculture
Washington, D.C. 20250

Date: June 15, 1998

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AUTHORITY AND INTEREST

Pursuant to its decision in Review of Rail Access and Competition Issues, STB Ex Parte 575, served April 17, 1998, the Surface Transportation Board (Board) has instituted this proceeding to solicit comments on proposed rules that would establish expedited procedures for shippers to obtain alternative service from another rail carrier when the incumbent carrier cannot properly serve shippers.

These comments are filed on behalf of the Secretary of Agriculture. Under the Agricultural Adjustment Act of 1938 and the Agricultural Marketing Act of 1946, the Secretary is charged with the responsibility to represent the

interests of agricultural shippers and producers in improving transportation services and facilities by, among other things, initiating and participating in Board proceedings involving rates, charges, tariffs, practices, and services.

PREFATORY REMARKS

The service problems of the past year have shown that rail service disruptions can quickly multiply throughout the entire rail network. The Department of Agriculture (USDA) believes that the Nation's rail network is much more intensively employed today than it was ten years ago. Because of the high rates of rail capacity utilization, shocks that, in the past, could be easily handled locally, now can disrupt rail service in regions far removed from the site of the original disturbance. Given the increased probability that such service disruptions can have impacts on interstate and international commerce, USDA supports the Board in initiating this proceeding and welcomes the opportunity to present its comments. We believe that rules providing shippers expedited relief for service inadequacies will not only prevent service discrimination but may also help diminish the severity of rail disruptions when they do occur.

USDA agrees with both shippers and railroads that the Board should be able to remedy service failures more quickly and effectively. We also believe that the proposed rule, which would allow shippers to seek relief either under

49 U.S.C. 10705 or 11102, will allow shippers to obtain relief from service failures that do not rise to “an emergency of such magnitude as to have substantial adverse effects on shippers and on rail service” in a region of the United States. Currently, rail access challenges using sections 10705 and 11102 must prove that the railroad is acting in an “anticompetitive” manner contrary to the competition policies outlined in 49 U.S.C. 10101. USDA agrees with shippers that this standard is too restrictive and precludes alternative service in those situations where it is most urgently needed — when a railroad finds itself unable to provide the level of service its shippers need and are accustomed to receiving.

STRIKING THE RIGHT BALANCE

USDA is aware that implementing this proposed rule will be difficult; the Board must strike the right “balance” between the competing claims of the owner (the railroad whose performance has deteriorated) and the general public (shippers and competing carriers). We agree with the Board that access to another railroad when service is plainly inadequate for a shipper is a serious remedy and that shippers should first meet the two-part test the board is proposing. Shippers should (1) consult with the incumbent carriers to see when adequate service will be restored, and if service cannot be restored in a reasonable period of time, (2) obtain from another railroad the necessary

commitment to meet the shipper's needs, safely and without degrading service to other customers or interfering with the incumbent's ability to provide service. We note that, in our October 23, 1997, remarks before the Board in Ex Parte 573, we stated that the Board

should consider using its emergency powers under 49 U.S.C. 11123 to direct the handling, routing or movement of traffic so as [to] improve the level of service being provided to specific agricultural shippers. Although the USDA would caveat that such emergency powers only be exercised ... in specific situations in which *(1) agricultural shippers currently being served by the [Union Pacific Railroad (UPSP)] have identified alternative rail service providers who are willing to serve them, and (2) such alternative service would not compromise recovery of the UPSP under its recovery plan.* (Emphasis added).

USDA's suggestion thus matched the second of the two tests the Board has proposed.

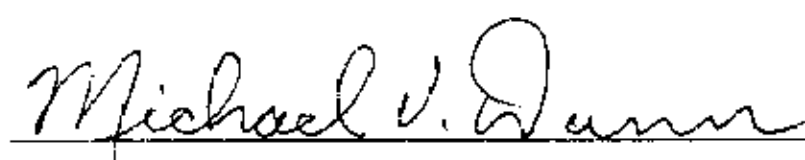
Our view is that there are win-win opportunities available to railroads and shippers. Should congestion create power or crew shortages in one part of a carrier's system, shippers in areas removed from the source of the congestion would benefit from additional access. Access in this case might benefit the congested carrier, too, as that carrier could devote its limited resources to fixing its immediate problems undistracted by shippers in other parts of its system.

CONCLUSION

USDA supports the proposed changes to Title 49, Chapter X, Part 1146 of the Code of Federal Regulations. Because of the high levels of traffic

railroads are now able to attract, and the resulting lack of available capacity, railroads seem unable to respond to shocks with the same degree of flexibility they once exhibited. As a result, rail service can be disrupted in regions far removed from the site of an initial disturbance. These disruptions can easily affect interstate commerce and USDA believes that the rules proposed by the Board may help diminish the severity of rail disruptions when they do occur.

Respectfully submitted,

A handwritten signature in cursive script, reading "Michael V. Dunn", is written over a horizontal line.

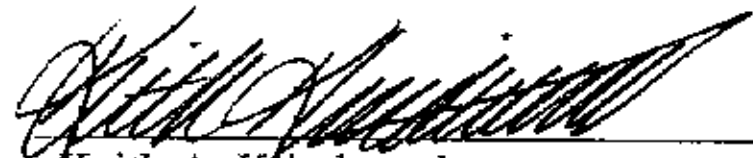
Michael V. Dunn
Assistant Secretary

Marketing and Regulatory Programs

U.S. Department of Agriculture
Washington, D.C. 20250

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 15, 1998, he caused a copy of the Department of Agriculture's comments to be served by first-class mail, postage prepaid, on all parties of record in STB Ex Parte No. 628, Expedited Relief For Service Inadequacies.

A handwritten signature in black ink, appearing to read "Keith A. Klindworth", written over a horizontal line.

Keith A. Klindworth

Program Manager

Marketing and Transportation Analysis
Agricultural Marketing Service