

Farmers, Grain Elevators Urge Passage of S. 772 & S. 953

Presented by Robert Carlson

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Hello, and thank you to the Senate Subcommittee on Transportation for the opportunity to visit with you today. I am grateful to be a member of this panel of people who have a vested interest in this nation's rail transportation system.

My name is Robert Carlson. I am a farmer. Today, I am speaking on behalf of the more than 40,000 member families of North Dakota Farmers Union. In addition, I am representing the concerns of the affiliated farmer-owned cooperative grain elevators in my state, and I am also representing National Farmers Union and its 300,000 members nationwide.

For more than 10 years, I have been president of North Dakota Farmers Union, a general farm organization that has served farmers, ranchers and cooperatives for more than 80 years. Rather than give narrow focus to a specific crop or type of livestock, Farmers Union is able to see the entire picture of family farm agriculture. Our focus is to strengthen the viability of family farms for generations to come. In this quest, we have and continue to look well beyond the farm gate. We take a keen interest in what customers are demanding of us. Those customers could be consumers buying groceries, bakeries buying flour or another nation seeking a shipload of soybeans.

Depending on market demand, our crops may be bound for the export terminals of the Pacific Northwest, flour mills near Chicago, feedlots in southern states or ethanol plants in Iowa, to name a few. Our nation's rail system is vital in terms of national security and economic growth. The viability of this nation's family farms and ranches is entirely dependent on railroads. I'd like to say this is a win-win partnership for both producers and railroads. Sadly, it is not.

Railroads in general have put rural America low on the list when it comes to service. And, in areas where little if any true competition exists, railroads have squeezed excessive profits from farmers and grain elevators, while in return giving us a “take it or leave it” level of service.

Farmers Union supports passage of Senate Bills 772 and 953. The former being the Railroad Antitrust Enforcement Act of 2007, the latter being the Rail Competition and Service Improvement Act of 2007. For the record, the rail industry has said its current record prosperity is due to the Staggers Rail Act of 1980. There is widespread consensus that railroads are enjoying financial rewards due to deregulation. These rewards are literally coming at the expense of captive shippers such as farmers on the Northern Great Plains. Senate Bills 772 and 953 are the only hope family farmers and locally-owned grain elevators have in restoring a measure of fairness that otherwise has been left behind in this era of deregulation.

We are at the mercy of BNSF, a company that itself seems merciless in treating grain elevators and farmers as if they were a nuisance. We are customers. Indeed, we are captive customers which ought to make us more valuable to the BNSF. That captivity, however, means we have no other realistic shipping options. In a free enterprise system, competition drives innovation, lower costs and better service. Railroads are quick to serve intermodal customers between, say, Chicago and Seattle, as that traffic can be won away by a competing railroad that also serves both end points. BNSF gives far less attention to serving grain elevators in North Dakota because that grain has no other realistic way to move to market. In fact, grain has been piled up as grain elevators run out of storage on account of a lack of trains. Why would BNSF do this? Because the grain isn't going anywhere, allowing the railroad to get around to delivering cars when it is more convenient to them. In this process, grain elevators and farmers wait on the sidelines to market their grain. Service and rates as determined by the railroad can dictate which shippers prosper and which ones are sidetracked.

During the car shortage of 2003-04, BNSF records show that 70 percent of the past due orders for grain cars were for shippers in North and South Dakota, Montana and Minnesota - areas that qualify as captive to BNSF. Farmers and elevator managers are equally frustrated by unjustly high rates and extremely poor service.

I would prefer a grain elevator manager tell you some of the horror stories I have heard. Unfortunately, the Surface Transportation Board does not have a witness protection program. Elevator managers say they prefer not to voice their concerns out of fear of reprisal. BNSF does have the market power to make or break its own customers. I understand this: I served on the board of a large farmer-owned grain elevator cooperative.

It is worth noting that farmers really do pay the freight. When you buy a car, you pay a transportation fee. If you buy something online, you pay for the packaging and shipping. Yet when a grain elevator ships wheat to a flour mill or for export, the elevator pays the railroad. If rail freight rates go up, the price elevators in turn pay farmers for their crops will go down. This puts farmers in my state at a huge price disadvantage as compared to farmers in Nebraska, where BNSF faces significant competition from Union Pacific and, subsequently, shipping rates are less.

As you know, the Interstate Commerce Commission was abolished in 1995. In its place, Congress created the Surface Transportation Board which was told to limit its level of oversight (read: regulation) of the railroads. The STB has made it extremely difficult for shippers to challenge rail rates as excessive. The costs to do so are enormous in terms of time and money. Further, farmers and grain elevators have little expectation the STB would order and police any effective change in the event the rail industry was found guilty.

My state used to be served by five Class I railroads. Today, only two operate in the state as a result of mergers. Mergers have reduced more than 40 Class I railroads in 1980 to seven today. And of these, four – two in the west, two in the east – effectively control more than 90 percent of the traffic. While that may not seem like a true monopoly, it clearly shows market dominance. Further, as these railroads tend to exclusively serve vast areas of territory in which there is no effective competition, they have become monopolies. In the Upper Great Plains, BNSF does not lose sleep at night over the threat of competition from trucks, river barges or Union Pacific.

We appreciate our short line and regional railroads. In most cases they are models of customer-friendly service. But it is important to remember they are not competition to the Class I lines. In fact, they are indebted to the Class I railroads for car supply, pricing and off-line service. Short lines, regionals and Class I railroads all could be more innovative and competitive if paper barriers would be removed to allow for a more competitive interchange of cars to seek lower shipping rates. This kind of consumer approach is what most Americans are used to. As an example, you are not forced to buy your groceries from a specific store, you are free to choose. These bills are meant to give shippers more choices in routing their products to market.

Therein lies the problem. Captive shippers pay more than those who have options. The Staggers Act allows - encourages - railroads to use differential pricing. They can charge a North Dakota elevator significantly more to move a carload of grain 400 miles to Minneapolis than to move the same car another 400 miles from Minneapolis to Chicago. Why is this, given the distance and cost is roughly the same? Because two railroads compete for traffic over the 400 miles between Minneapolis and Chicago.

According to law, the STB may entertain a rate challenge from a shipper providing the railroad is charging a rate that is in excess of 180 percent of variable costs and the railroad faces no effective competition. The Government Accountability Office (GAO) has found that “traffic traveling at rates significantly above the threshold for rate relief has increased. We (GAO) reported that STB’s rate relief process to protect captive shippers has resulted in little effective relief for those shippers.” In 2006, the GAO raised the question of “whether rail rates in selected markets reflected justified and reasonable pricing practices, or an abuse of market power by the railroads?” The GAO further found that some areas with access to a single Class I railroad “also have more than half their traffic traveling at rates that exceed the statutory threshold for rate relief.”

Rail rates in Montana and North Dakota are between 250-450 percent of variable costs - significantly higher than the STB’s benchmark of excessive. Why, then, are shippers not lining up to file rate complaints with the STB? Cost and complexity come to mind. Few shippers are willing to risk the tens of thousands of dollars (some estimates suggest it would take several million dollars) and years that pursuing a rate case will demand. Even more telling is shippers have little hope the STB would - or could - order any meaningful action should the challenge be successful. Most shippers have observed the STB does a better job advocating for the rail industry’s right to earn an “adequate” profit as opposed to limiting the rail industry from using market power to charge as much as possible from shippers who are at their mercy.

GAO singled out STB’s rate relief process as “inaccessible to most shippers (and) expensive, time consuming and complex.”

This obstacle has deterred many shippers from even trying to seek relief from what are, by STB definition, excessive rates. This is why the North Dakota Legislature in 2003 and again in 2005 appropriated state funds to support a rate case filing before the STB. Both North Dakota Farmers Union and North Dakota Farm Bureau contributed toward this initiative.

In January 2007 the STB ruled the railroads were overcharging customers through a fuel surcharge. One study estimated the railroads pocketed \$3 billion due to overcharging. Adding insult to injury, the railroads had been linking fuel surcharges to rates, meaning captive shippers had to pay even more than other shippers to cover the railroad's cost of fuel. The surcharges had nothing at all to do with the actual increase of fuel prices relating to the fuel consumed to move grain from an elevator to a buyer. The STB did tell railroads to link fuel surcharges to actual distance of each car movement, which made sense. The STB did not ask the railroads to refund the overcharges.

The railroads have taken advantage of grain shippers, especially captive shippers in the Upper Great Plains. This is not a healthy business arrangement. It is hardly a partnership, though it ought to be. Another item worth noting is that grain elevators have invested huge sums of capital in adding miles of rail sidings and grain storage to handle unit trains, which ostensibly make the railroads more efficient in the short run and leave the elevators deeply invested for the long haul.

In North Dakota, 90 percent of our spring wheat - and we grow the most in the nation - moves by rail, the balance by truck. According to the Upper Great Plains Transportation Institute, more than 80 percent of all North Dakota grains and oilseeds move by rail. And, I hasten to mention that Canadian Pacific has limited route miles in North Dakota. BNSF remains the 700-pound gorilla in the room. Yet for the few fortunate grain elevators that do have access to both Class I railroads in my state, the shippers prefer using Canadian Pacific by a factor approaching five-to-one.

As it stands, captive shippers are living with higher rates. The railroads are using market power to extract every extra dime of profit possible. The STB has not protected captive shippers from being exploited. I could go on at length about the service and pricing abuses that exist.

Rather, I would ask Congress to pass Senate Bills 772 and 953 to restore a measure of competition to rail transportation. Railroads are sounding the alarm that these policies will lead to reregulation. This is not true. Not at all. Paper barriers, final offer arbitration and rate quotes over rail segments are all provisions in this legislation that will provide access to increased competition and provide captive shippers access to rate and service problem resolution. We also ask Congress simultaneously to make the STB more accountable to shippers and to make rate challenges more affordable and accessible to captive shippers whose pockets are not nearly as deep as the rail industry - and whose pockets have been emptied by a rail industry whose market power is virtually unchecked.

