

# RAILROAD WEEK IN REVIEW

January 6, 2023

*“On December 14 Foster Farms informed UP and the STB’s Office of Public Affairs, Governmental Assistance and Compliance (“OPAGAC”), that Foster Farms was stopping outside sales to dairy cattle and chicken producers, and that all three of Foster Farms’ facilities would run out of feed in the week prior to Christmas.” — Foster Farms’ Ex Parte Service request, December 29*

*“Ohio plus 18 other states are asking the Supreme Court to appeal a rule that stated the STB has full authority over railroad activities. Specifically, the states want to enforce and react to blocked railroad crossings, which not only are a threat to safety, but also cause significant delays. According to the report, the FRA estimates more than 25,000 blocked crossings from December 2019 to September 2021 – a majority of them were not allowed to be investigated because of the stipulations that give the STB the authority to enforce.” — Jason Seidl, Cowen Equity Research, December 30*

**The STB on December 30** filed its Docket No. FD 36609, “Foster Poultry Farms Ex Parte Petition for Emergency Service Order” directing Union Pacific “to deliver certain trains of corn to Foster Poultry Farms’ facilities in Traver, Turlock, and Delhi, Cal., on the schedule provided by UP in its pleading and to provide the Board a status update on January 3, 2023. Foster Farms is directed to reply to UP’s status update no later than January 4, 2023.”

By way of background, the matter goes back six months to June 15 when Foster Farms petitioned the STB for an Emergency Service Order concerning UP service failures dating back to February. According to the petition, UP delivers corn in 100-car unit trains from origins in Iowa and other midwest points to be processed into animal feed for both poultry and cattle. [WIR June 17]

Foster had said the Emergency Service Order “is necessary to alleviate harm to the poultry, dairy, and feed yard livestock that depend on the corn meal supplied by Foster Farms.” UP had acknowledged on June 16 that service to Foster Farms had not been “adequate” and that it is “committed to improving.” Such remedial steps included putting on another train set, prioritizing crews and power for the Foster service, and weekly conference calls between UP and Foster at least until service improved.

I guess it wasn’t good enough. On December 29, 2022, Foster Farms filed a petition for emergency service with the Board as a result of continued deterioration in rail service

from UP. Says the Foster filing, “Foster Poultry Farms hereby submits this request to the STB to issue a second emergency service order (ESO)” noting that on June 17, 2022 the Board issued its first ESO in this proceeding following several months of persistent failures on the part of UP to deliver unit trains of corn to Foster Farms’ facilities.

In the present filing, Foster says “In the month of November, only eight deliveries of unit trains of Foster Farms were delivered and unloaded at Foster Farms’ facilities. Foster Farms acquired an additional train from another rail shipper to counter UP’s service slow down. UP also delivered another train that was billed in October but did not arrive until November. For the entire month of November UP managed only seven complete cycles on Foster Farms’ four trainsets, for an average of 1.75 turns per train per month versus a planned 2.5 turns each unit.

‘The lack of sufficient deliveries of unit trains in October and November resulted in feed stocks dwindling to critically low levels. Foster Farms informed UP in November that its service was slipping, and Foster Farms was having to supplement the lack of UP deliveries with (1) corn shipped on BNSF and transloaded onto trucks at locations within driving distance to Foster Farms’ facilities, and (2) the purchase of extra unit trains on the secondary market.’”

Cutting to the chase, the STB Decision “directs the UP to deliver the five loaded trains currently destined for Foster Farms’ Traver, Turlock, and Delhi facilities on the schedule provided by UP in its pleading to the greatest extent possible. Should UP need to deviate from its proposed schedule for those five trains, UP is directed to immediately advise the Board and Foster Farms in writing. UP is directed to file a status update as discussed in this decision on January 3, 2023. Foster Farms is directed to reply to UP’s status update no later than January 4, 2023.”

Though most Board Members concurred with the Decision, Board Member Schultz dissented in part. “While I concur in the outcome, I disagree with the decisions to omit any citation to the Board’s legal authority... Nothing in this order relieves UP of its common carrier obligation with respect to the rest of its network.” Excellent point.

**The blocked crossing question** has been around for a loooong time. The states said they had authority; the FRA said they didn’t. I remember one railroad — this was 30 years ago — that had a crossing at every city block. The railroad argued that emergency vehicles could get around the train at a nearby crossing but the city said that wouldn’t do for emergency vehicles. But now trains are so long one train could block ALL the crossings. Then what?

The KATY worked very hard to close grade crossings and protect with gates those crossings that had to be kept active. Then again, KATY was only running trains of 60-100 cars, not 200 or 300. A friend who was a VP there at the time writes, “Grade separation is the best solution, but very expensive. The railroad industry is going to have to face up to the problem.”

Hershey, Nebraska, is a small town at the west end of UP’s North Platte Yard. The town’s main drag has a UP gate-protected grade crossing in its middle. There were so many trains that as soon as one train cleared another was on the approach. Even at 10 PM auto traffic was backed up for blocks.

I believe there were plans afoot here and on other towns along the UP triple track where grade crossing elimination projects were on the drawing boards. So you can see that in just these two instances merely passing laws about blocked crossings isn’t going do anybody much good. You need to eliminate the crossings and that takes state money.

ASLRRA President Chuck Baker confirms that such plans *are* afoot. He writes that the FRA has made available nearly \$600 million in its “Railroad Crossing Elimination Grant Program.” This program provides funding for highway-rail or pathway-rail grade crossing improvement projects that focus on improving the safety and mobility of people and goods.

Eligible projects include (their words) “grade separation or closure, including through the use of a bridge, embankment, tunnel, or combination thereof; track relocation; improvement or installation of protective devices, signals, signs, or other; measures to improve safety related to a separation, closure, or track relocation project; other means to improve the safety if related to the mobility of people and goods at highway-rail grade crossings (including technological solutions); and the planning, environmental review, and design of an eligible project type.” It’s about time.

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