

BEFORE THE
SURFACE TRANSPORTATION BOARD

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Docket No. EP 761

HEARING ON REVENUE ADEQUACY

COMMENTS

submitted by

NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS (NACD)

Dated: November 26, 2019

The National Association of Chemical Distributors (NACD) respectfully submits these comments in response to the Surface Transportation Board's Notice of a Hearing on Revenue Adequacy, Docket No. EP 761. NACD is pleased the Board is considering the Rate Reform Task Force recommendations regarding revenue adequacy and seeking input from affected parties.

Identity and Interest of the National Association of Chemical Distributors

The National Association of Chemical Distributors (NACD) is the premier trade association for the U.S. chemical distribution industry, representing nearly 430 chemical distributors and their supply chain partners. NACD members represent more than 85 percent of the chemical distribution capacity in the nation and generate 90 percent of the industry's gross revenue. NACD members blend, re-package, warehouse, transport, and market chemical products made by large-quantity manufacturers to 750,000 end-users in nearly every industry

sector, from cosmetics to automotive and from paints and coatings to food and water treatment. NACD members operate in nearly every U.S. state through more than 3,000 facilities and are responsible for more than 75,000 direct and indirect jobs in the nation. NACD members are predominantly small regional businesses, many of which are multi-generational and family owned.

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution[®], the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations.

Transportation is an integral part of the chemical distribution business. In 2018, NACD members made 4.6 million shipments, were responsible for 30.6 million tons of product, and drove more than 404 million miles while safely making deliveries to customers every 6.9 seconds. Over the past eight years, NACD members averaged just one incident for every 9,091 shipments. A substantial percentage of NACD members receive products via rail cars and greatly depend on reliable and affordable rail service to meet the needs of their customers and remain competitive in the global market.

NACD Position

NACD's comments focus on the Rate Reform Task Force (RRTF) recommendation to suspend the bottleneck protections for rates of revenue-adequate carriers that are above the Revenue Shortfall Allocation Methodology level.¹ NACD supports this recommendation, which would allow rail customers to direct the carrier to deliver their cars to a feasible interchange

¹ Rate Reform Task Force Report to the Surface Transportation Board, April 25, 2019

point with a second carrier. Both carriers would be required to quote a tariff rate, and the rail customer would be able to challenge the rate if it was deemed to be unreasonable. This is similar to “competitive haul line rates” for revenue-adequate carriers under the Canadian regulations, which have worked well.

As the RRTF describes in its report², a rail bottleneck is when more than one railroad may be involved in providing service from the origin to the destination, but only one railroad – the bottleneck carrier – can serve either the origin or the destination. Further, as the RRTF outlines in its report³, several past court decisions have provided no relief to rail customers in compelling rail carriers to use routings over the lines of non-bottleneck carriers or to provide reasonable rates in these areas.

The RRTF points out that one of the decisions, *Great Northern Railway v. Sullivan*, was based on the Board’s conclusion at the time that permitting the maximum differential pricing at bottlenecks would assist carriers in achieving revenue adequacy.⁴ NACD strongly agrees with the RRTF’s assessment, stated as follows, “Given the significant improvement in the rail industry’s finances, a change making it easier to require revenue-adequate carriers to short-haul to promote competition for a portion of a movement might well be another permissible reading of the statute.”⁵

The burden for rail customers to challenge rates, particularly those set by the Class I railroads is prohibitive, particularly for smaller businesses such as NACD members. Rate challenges can cost millions of dollars and take many years to resolve; therefore, pursuing a challenge is simply not an option for most rail customers. The ability to challenge individually a

² Ibid

³ Ibid

⁴ Ibid

⁵ Ibid

portion of a route that is bottlenecked would be a small, positive measure to improve access for rail customers, while not placing an undue burden on the railroads.

Another important measure that would improve access for rail customers is the Board's July 2016 proposed rule on competitive switching.⁶ This proposal would allow rail customers with no competitive rail service or other modal options to request to have their freight moved to a nearby rail line, if another Class I railroad is reasonably accessible. Competitive switching is expressly allowed by statute but has never been permitted by the Board because of overly restrictive regulations. NACD urges the Board to finalize the rule to facilitate competitive switching.

Under the Staggers Rail Act, Congress envisioned a process by which shippers with access to a single railroad could have their cargo switched to another nearby carrier to promote rail competition. Since the Staggers Act went into effect in the 1980s, not a single company has been able to request successfully that their freight be transferred from one railroad to another. Despite continued concerns about rail competitiveness and quality of service, the unrealistically high threshold set for rail customers to prove anti-competitive conduct in order to obtain competitive switching approval has prevented firms from pursuing this option.

Under the Board's competitive switching proposal, certain rail customers could obtain permission for reciprocal switching by showing the proposed shipping would be 'practicable and in the public interest' or 'necessary to provide competitive rail service.' The Board would allow companies to request that their cargo be moved to another major railroad only if another rail line is reasonably accessible. If the switch is shown to be unsafe or harmful to other customers, the railroad can block it.

⁶ Surface Transportation Board Decision, Docket No. EP 711, Reciprocal Switching, July 27, 2016

Conclusion

Extreme consolidation of the Class I railroads over the years has resulted in limited access and poor service for rail customers. Suspending the bottleneck protections and finalizing the competitive switching rulemaking are two commonsense reforms needed to ensure businesses dependent on rail service have practical options when shipping and receiving product. These measures have worked well in Canada. In the United States, these reforms would result in greater competition, more efficient movement of goods, and a stronger economy.

NACD commends the Board for initiating the RRTF and for considering the group's recommendations. NACD looks forward to providing additional input and working with the Board to address these issues further. If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer C. Gibson".

Jennifer C. Gibson
Vice President, Regulatory Affairs