

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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STB DOCKET NO. EP 761

HEARING ON REVENUE ADEQUACY

STB DOCKET NO. EP 722

RAILROAD REVENUE ADEQUACY

WRITTEN TESTIMONY OF DOW, INC.

Dow, Inc., submits this written testimony in response to the Notice of Public Hearing served by the Surface Transportation Board (“Board”) in the above-captioned proceeding on September 12, 2019 (“Notice”). The Notice solicits input on four recommendations regarding revenue adequacy that have been presented in a Report issued by the Board’s Rate Reform Task Force (“RRTF”) on April 25, 2019 (“RRTF Report”). Through this testimony, Dow responds to the RRTF recommendation specifically pertaining to suspension of the protections the Board granted bottleneck carriers in the Bottleneck Decisions.¹ As a member of the American Chemistry Council, Dow also endorses ACC’s testimony in this proceeding.

Dow is a leading multi-national manufacturer of chemical products that operates 113 manufacturing sites in 31 countries and employs approximately 37,000 people. Dow depends upon railroads to provide safe, secure, reliable, and economic transportation of raw materials and products to sites throughout the United States. Dow supports the RRTF’s recommendation to

¹ See *Cent. P & L Co. v. S. Pac. Transp. Co.*, 1 S.T.B. 1059 (1996) (“*Bottleneck I*”), *clarified*, 2 S.T.B. 235 (1997), *aff’d sub nom. MidAmerican Energy Co. v. STB*, 169 F. 3d 1099 (8th Cir. 1999) (“*Bottleneck Appeal*”).

suspend bottleneck protections for revenue-adequate rail carriers as a rational means to enhance competition and minimize reliance upon regulatory protections.²

The Bottleneck Decisions gave priority to protection of a railroad's long-haul over the enhancement of competition, claiming such protection was necessary to the attainment of revenue adequacy. But much has changed about the financial health of the rail industry since the original Bottleneck Decision in 1996 to render that rationale obsolete. The Board's own data shows that, applying a very conservative definition of "long-term revenue-adequacy," BNSF, NS and UP are revenue-adequate and the other Class I railroads have significantly improved their financial health despite not yet having attained long-term revenue-adequacy. In reality, no rail carrier has had any difficulty raising capital for more than a decade, with Wall Street giving the rail sector a strong endorsement.

Although the Board acted within its discretion in the Bottleneck Decisions to recognize an exception to a carrier's long-haul rights only when shippers make a full-blown competitive access case, this result was not mandated by the statute. The long-haul provision of the statute, at 49 U.S.C. § 10705(a)(2), is not absolute. The statute contains multiple exceptions, one of which permits the Board to short-haul a carrier when it decides that the alternate route "is needed to provide adequate, and more efficient or economic, transportation."³ In addition, reciprocal switching is another expressly-identified exception in 49 U.S.C. § 10705(a)(2)(A), when the Board finds such switching "to be practicable and in the public interest" or "necessary to provide

² RRTF Report at 39-41.

³ 49 U.S.C. § 10705(a)(2)(C).

competitive rail service.”⁴ Thus, both exceptions are closely-related, as competition is the most proven means to ensure adequate, efficient and economic service.

In view of the financial strength that now pervades the rail industry, the Board should reconsider whether it is still necessary to allow carriers to extend their bottleneck monopolies over non-bottleneck route segments. Dow submits that such long-haul protections are no longer justified at all when a rail carrier is revenue-adequate. Even for those rail carriers which have not officially attained long-term revenue adequate status, Dow believes that bottleneck rates should not automatically be foreclosed.

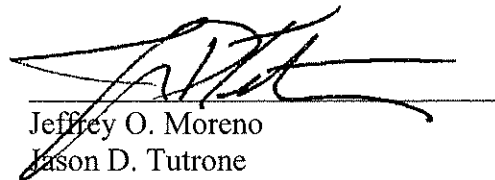
Dow has been a strong advocate for the reciprocal switching proposals in Docket No. EP 711 (Sub-No. 1), *Reciprocal Switching*. A reciprocal switch is a short-distance bottleneck, which means that reciprocal switch moves also would qualify for the bottleneck relief contemplated by the RRTF Report. The principal differences are that revenue-adequacy is not a prerequisite to reciprocal switching under EP 711 and the RRTF recommendation does not require the fact findings required by the proposals in EP 711.

When it comes to regulatory reforms related to rate regulation and enhanced competition, these are not mutually exclusive. Enhanced competition reduces the need for, and improves the efficacy of, rate regulation. Furthermore, if required to choose, many shippers like Dow would prefer to rely upon competition over regulation to manage their rail service needs. EP 711 was initiated over eight years ago and, just as the Board approached the finish line, it abruptly and inexplicably stopped. Now the Board appears to be shifting its focus to rate regulatory reform while EP 711 languishes in regulatory purgatory. Dow urges the Board not to allow reciprocal switching to wither on the vine, but to advance it in synchrony with its rate reform efforts.

⁴ 49 U.S.C. §§ 10705(a)(2)(A) & 11102(c)(1).

Dow commends the Board for establishing the RRTF and the creative ideas that the RRTF has proposed. Bottleneck change is at the top of Dow's regulatory reform list whether it be in the form proposed by the RRTF or in EP 711. Dow urges the Board to advance such change expeditiously.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Moreno', is written over a horizontal line.

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