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SURFACE TRANSPORTATION BOARD

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September 24, 2021

Ex Parte 711 (Sub-No. 1)

Part of

Reciprocal Switching

Public Record

Summary of Ex Parte Meeting between Association of American Railroads and**Surface Transportation Board Member Patrick Fuchs****September 16, 2021**AAR Attendees:

- John Gray, Senior Vice President, Policy and Economics
- Tim Strafford, Associate General Counsel and Corporate Secretary
- Fred Miller, Assistant General Counsel and Government Affairs Liaison

STB Attendees:

- Patrick Fuchs, Board Member
- Lisa Novins, Attorney Advisor
- Stephanie Borges, Administrative Assistant

Meeting Summary:

AAR thanked Member Fuchs for the opportunity to meet. AAR noted its reason for coming in was to highlight the places in the record in both EP 711 and EP 711 (Sub-No. 1) that set forth its views on the many important operational and legal issues raised by this proceeding and the flaws in the 2016 Notice of Proposed Rulemaking ("NPRM"). AAR noted that ex parte meetings have strong value in highlighting issues and arguments in the record but cannot take the place of on the record proceedings to establish evidence and argument.

The discussion focused on three primary issues: (1) differences between the US and Canada regarding switching; (2) the appropriate Board methodology to impose a fee where carriers cannot reach a negotiated outcome in instances of Board-ordered switching; and (3) the parameters of what constitutes an interchange for where switching can be ordered.

AAR explained the different characteristics of Canada and the U.S. when it comes to switching, including the differences in the two countries' economies and population densities and the corresponding differences in their respective rail networks, the history of Canadian and American railroading (in particular the evolution of switching), and the number of interchange points. This led to a discussion of switching in the Vancouver area and Calgary, Edmonton, Winnipeg, and Montreal. There was then a discussion about instances in past proceedings where switching agreements were imposed as conditions in merger proceedings in the United States, as well as instances where railroads voluntarily agreed to switching arrangements. The impacts to service and investment were discussed and how those instances compare and differ to the Board's proposal, including the role of negotiations and offsetting benefits associated with transactions.

In response to a question, AAR noted the lack of an appropriate proposal in the 2016 NPRM regarding fees. The AAR mentioned general principles that should guide the Board in considering how it would approach setting compensation among railroads for performing switching ordered by the Board in those instances where a negotiated outcome cannot be reached.

On the topic of the characteristics of an interchange, AAR explained that operationally it is difficult to identify commonality among interchange points where switching occurs, other than that there is necessary infrastructure, crew resources, and power to perform the work. AAR stated that, because those agreements were voluntarily negotiated and deal with varying volumes, carriers could ensure that their operating plans could accommodate the switching events.

Association of American Railroads
EP 711 and EP 711 (Sub-No. 1)
Reciprocal Switching
Comment Key

- Forced switching cannot be used as back door price regulation.
 - AAR Reply Comments EP 711-1, pgs. 5-15 (1/13/2017)
 - AAR Reply Comments EP 711, pgs. 37-38; Reply V.S. Eakin and Meitzen 12-15 (5/30/2013)
 - AAR Opening Comments EP 711, pgs. 29-33 (3/1/2013)
- There is no need to change the Competitive Access Rules.
 - History of Competitive Access Rules and through routes.
 - AAR Opening Comments EP 711, pgs. 24-29 (3/1/2013)
 - Competition in the rail industry is fierce and railroads face both direct and indirect competition. Switching already occurs between carriers where it makes economic sense and the facilities exist to accommodate it.
 - AAR Opening Comments EP 711-1, pgs. 15-18, 20-21 (10/26/2016)
 - AAR Opening Comments EP 711, pgs. 33-35, 40-43 (3/1/2013)
 - Neither a lack of cases, nor consolidation in the industry, indicate a problem that require rule changes.
 - AAR Opening Comments EP 711-1, pgs. 20-27; V.S. Rennie 5-8 (10/26/2016)
 - AAR Opening Comments EP 711, V.S. Rennie 19-23 (3/1/2013)
 - Improved financial health of the rail industry is no justification for changing the rules without showing of abuse of market power.
 - AAR Opening Comments EP 711-1, pgs. 27-29 (10/26/2016)
 - AAR Reply Comments EP 711, V.S. Fagan 6-7 (5/30/2013)
 - AAR Opening Comments EP 711, V.S. Rennie 6-18 (3/1/2013)
- AAR's filings in this proceeding have made clear the legal deficiencies of forced switching.
 - Forced switching should only be used as a remedy in instances of market failure or competitive abuse. The anticompetitive conduct standard is consistent with precedent that requires a showing of necessity for intervention.
 - AAR Opening Comments, EP 711-1, pgs. 7-13; V.S. Fagan 1-3 (10/26/16)
 - AAR Reply Comments EP 711, Reply V.S. Fagan 3-6 (5/30/2013)
 - AAR Opening Comments EP 711, pgs. 36-42 (3/1/2013)
 - Both prongs of the proposed rule would authorize switching without a compelling showing of need to address an abuse of market power.
 - AAR Opening Comments, EP 711-1, pgs. 13-19; V.S. Fagan 4-5 (10/26/16)
 - Forced switching cannot be used to restructure the competitive landscape of the rail industry.

- AAR Opening Comments EP 711, pgs. 23-29 (3/1/2013)
 - AAR Reply Comments EP 711, pgs. 34-42 (5/30/2013)
 - AAR Reply to Petition EP 711, pgs. 9-15 (7/27/2011)
- Forced switching would cause operational complexity and negatively impact network operations.
 - How switching rail cars between railroads works.
 - AAR Opening Comments EP 711-1, V.S. Rennie 8-12 (10/26/2016)
 - Testimony of William J. Rennie: Exhibits 2-4 (3/25/2014)
 - AAR Opening Comments EP 711, V.S. Rennie 24-39 (3/1/2013)
 - Forced switching on demand would degrade network.
 - AAR Reply Comments EP 711-1, pgs. 15-20 (1/13/2017)
 - AAR Opening Comments EP 711-1, pgs. 29-37; V.S. Baranowski 4-6; V.S. Rennie 8-12 (10/26/2016)
 - Testimony of William J. Rennie: Exhibits 5-7 (3/25/2014)
 - AAR Reply Comments EP 711, pgs. 20-23, 29-31, 35-41; Reply V.S. Eakin and Meitzen 15-20; Reply V.S. Rennie 4-16, 24-33 (5/30/2013)
 - AAR Opening Comments EP 711, pgs. 14-16; V.S. Eakin and Meitzen 6-7, 11-13; V.S. Rennie 40-90 (3/1/2013)
 - AAR Reply to Petition EP 711, pgs. 8-9 (7/27/2011)
 - Forced switching would impose unnecessary cost hurting all users of the rail network.
 - AAR Reply Comments EP 711-1, pgs. 15-20 (1/13/2017)
 - AAR Opening Comments EP 711-1, pgs. 37-41; V.S. Rennie 12-16 (10/26/2016)
 - Testimony of William J. Rennie: Exhibit 8 (3/25/2014)
 - AAR Reply Comments EP 711, pgs. 7-9, 17-31, 41; Reply V.S. Baranowski and Brown, 1-10; Reply V.S. Eakin and Meitzen, 1-2, 7-12; Reply V.S. Rennie 16-23 (5/30/2013)
 - AAR Opening Comments EP 711, pgs. 16-22; V.S. Baranowski and Brown, 5-10; V.S. Eakin and Meitzen 3-17, Appendix; V.S. Rennie 91-112 (3/1/2013)
- Interswitching in Canada does not support the NPRM proposals.
 - Canada has a different, less complex network.
 - Testimony of Phil Ireland EP 711, Exhibits 1-5 (3/25/2014)
 - AAR Reply Comments EP 711, pgs. 31-34, Reply V.S. Ireland and Case, 16-25, 27-40; Reply V.S. Eakin and Meitzen 12-15 (5/30/2013)
 - Canada's rail network was built with interswitching in mind.
 - AAR Reply Comments EP 711, Reply V.S. Ireland and Case, 11-15, 25-26 (5/30/2013)

- The structuring of compensation imposed by the Board must recognize the importance of differential pricing to a healthy railroad industry.
 - AAR Reply Comments EP 711-1, pgs. 35-40 (1/13/2017)
 - AAR Reply Comments EP 711, pgs. 14-19 (5/30/2013)
 - AAR Reply to Petition EP 711, pgs. 7-8 (7/27/2011)