

SURFACE TRANSPORTATION BOARD

Ex Parte 711 (Sub-No. 1)

Summary of Ex Parte Meeting between Association of American Railroads and

Surface Transportation Board Member Ann Begeman

303044

September 24, 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

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September 29, 2021
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STB Attendees:

- Ann Begeman, Board Member
- Amanda Gorski, Attorney Advisor

Meeting Summary:

AAR thanked Member Begeman for the opportunity to meet. 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.

AAR noted the long history of interests representing some railroad customers seeking government intervention in railroad routing and operation and the staleness of the record considering the 2016 Notice of Proposed Rulemaking ("NPRM"). AAR also noted the age of the record, as the analysis of the 2016 NPRM in the record used 2014 data, and circumstances that have changed since then. AAR highlighted changes in the railroad operating environment in the last 10 years including recent disruptions related to pandemic and uneven economic recovery around the world and its implications to the international supply chain.

In response to a question, there was discussion of instances in past proceedings where switching agreements were imposed as conditions in merger proceedings in the United States. The impacts to service and investment of those agreements were discussed and how those instances compare and differ from forced switching, including the role of negotiations and offsetting benefits associated with transactions.

AAR expressed its view that the appropriate standard for switching was a showing of anticompetitive conduct, and not merely a customer desire for another railroad option. AAR also pointed to its filings that detail that forced switching should not be pursued by the Board as a means to circumvent its statutory responsibilities to regulate certain rates or judge a request for an alternate through route.

In response to a question, there was a discussion of the differences between the EP 711 petition proposal and the Board's proposal in EP 711 (Sub No. 1), with regard to regulatory certainty and case-

by-case approach. AAR expressed its concerns with both proposals, generally, and the thresholds that each established to obtain Board-ordered switching.

In response to a question, AAR also discussed 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, and the number of interchange points in each country where terminal switching can potentially occur.