

SURFACE TRANSPORTATION BOARD

Ex Parte 711 (Sub-No. 1)

Summary of Ex Parte Meeting between Association of American Railroads and

Surface Transportation Board Chairman Martin Oberman

September 22, 2021

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AAR Attendees:

- Ian Jefferies, President and CEO
- 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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STB Attendees:

- Martin Oberman, Chairman
- Ellen Erichsen, Chief of Staff
- Adam Kress, Attorney Advisor

Meeting Summary:

AAR thanked Chairman Oberman 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.

AAR summarized materials in the record that set out how switching works from an operational perspective, which led into a discussion of the operational impacts of forced switching on-demand and the complexities railroads face. 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, AAR explained there were approximately 1,500 locations in the United States where switching could occur, and the number of non-exempt carloads that could be impacted by the NPRM. AAR also addressed, in response to a question, the number of origin and destination pairs in the United States.

In response to a question, AAR discussed the instances in past proceedings where switching agreements were imposed as conditions in merger proceedings in the United States. The impacts to service and

investment were discussed and how those instances compare to and differ from forced switching, including the role of negotiations and offsetting benefits associated with transactions.

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)