



Freight Rail Customer Alliance

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January 18, 2022

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
395 E Street, SW
Washington, DC 20423

RE: Docket No. EP 711 (Sub-No. 1), Reciprocal Switching

Dear Ms. Brown:

FRCA respectfully opposes the request of the Association of American Railroads (“AAR”) to delay the hearing that the Surface Transportation Board (Board or STB) has scheduled for March 15-16, 2022.

The AAR’s use of such a motion to delay a proceeding that may lead to an outcome it may not like is an all too familiar tactic. For example, the AAR requested and obtained such an extension (albeit of only thirty days) in EP 711 (Sub. No. 1) back in 2016. This request comes with particular ill-grace in this instance. The EP 711 proceeding began almost eleven years ago. Additional delay is the last thing that is needed.

Nor can the AAR claim any surprise that the proceeding is being revived and a hearing has been scheduled. Competitive switching was part of President Biden’s Executive Order (EO 14306) on competition issued July 9, 2021, and Chairman Oberman noted the importance of competitive access in his statement released the same day. The AAR’s opposition and that of its supporters was immediate. *E.g.*, <https://www.aar.org/news/biden-order-could-undermine-rail-viability-service/> (July 9, 2021); and <https://www.forbes.com/sites/roslynlayton/2021/07/16/bidens-executive-order-gets-consolidation-wrong/?sh=13b9bcf53987> (July 16, 2021). Furthermore, AAR had sufficient concern about the possibility of action to have held ex parte meetings with individual Board Members back in September and October of 2021. In short, the AAR has been on notice for some time.

The AAR’s claim that an extension is needed to conduct more and protracted data analysis for the hearing is especially contrived. The Notice conspicuously does not present a new approach or advance a radical new proposal. Instead, it asks only for an update in light of recent developments. Intensive analysis of the waybill sample should not be needed for that purpose. For their part, shippers do not need the waybill to address how the combination of the pandemic and so-called precision scheduled railroading (“PSR”), which has been anything but, has, in the absence of effective competition, inflicted substantial harm on shipper operations and their supply chains, while enabling railroad profits and operating margins to soar.

For the reasons stated, FRCA respectfully opposes the AAR request for an extension of time and asks that it be denied.

Cynthia T. Brown, Chief
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Respectfully submitted,

A handwritten signature in cursive script that reads "Ann Warner".

Ann Warner
Spokesperson
Freight Rail Customer Alliance

About FRCA

An umbrella membership organization, the Freight Rail Customer Alliance (FRCA) includes large trade associations representing more than 3,500 electric utility, agriculture, chemical, and alternative fuel companies and their consumers. Through a growing coalition of industries and associations, the mission of FRCA is to obtain changes in Federal law and policy that will provide all freight shippers with reliable rail service at competitive prices. www.railvoices.org