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EP 711 (Sub-No. 1)

Submission via www.stb.gov

Hon. Martin Oberman
Chairman
Surface Transportation Board

Hon. Robert Primus
Vice Chairman
Surface Transportation Board

Hon. Patrick Fuchs
Member
Surface Transportation Board

Hon. Michelle Schultz
Member
Surface Transportation Board

Hon. Karen Hedlund
Member
Surface Transportation Board

RE: Proposed Rule on Reciprocal Switching (Docket No. EP 711)

Dear Chairman Oberman, Vice Chairman Primus, and Members Fuchs, Schultz and Hedlund:

The Independent Lubricant Manufacturers Association (“ILMA” or “Association”) submits the following comments in support of the Surface Transportation Board’s (“the Board”) notice of proposed rulemaking to improve the availability of reciprocal switching to rail customers.¹

I. Introduction of ILMA

ILMA, established in 1948, is an international trade association of 324 lubricant manufacturer, distributor, and supplier member companies. The overwhelming majority of the Association’s member companies are “small businesses,” as defined by the Small Business Administration. As a group, ILMA Manufacturing Member companies manufacture and sell over 70 percent of the metalworking fluids and 25 percent of all lubricants utilized in North America.

Independent lubricant manufacturers are neither owned nor controlled by companies that explore for or refine crude oil to produce lubricant base oils. Base oils are purchased from refiners, who are also competitors in the sale of finished products. Lubricant additives are purchased from chemical companies, who also may be competitors in the sale of finished lubricants. To succeed in this highly competitive market, independent lubricant manufacturers

¹ The original proposed rulemaking is docketed in the Federal Register as 81 Fed. Reg. 51149 (2016), but this letter is being submitted to the Board’s docket for its hearing on the proposed rule as instructed.

manufacture and sell high quality, often specialized, lubricants. Consequently, lubricant manufacturing supply chains naturally tend towards complexity, both in distance and regulatory burdens.

ILMA members provide essential products to the smooth functioning of the economy, and manufacture products which benefit the environment by reducing wear and tear on vehicles, including trains. Lubricants not only help move vehicles and manufacturing; they help things move *better*. In a fast-moving, highly competitive market, anything that disrupts supply chains, including reduced freight competition and expensive transport of products can substantially affect small, essential businesses.

The majority of ILMA members depend on the nation's freight railroads, including the seven Class 1 carriers operating in North America, for reliable and affordable freight rail service, including for delivering tank cars containing bulk quantities of base oils and chemical additives used to manufacture lubricants. Many of these tank cars travel from producers in the Gulf Coast to manufacturing facilities across the country. Some Association members have documented recent freight rail service and rate issues as part of the ongoing supply chain disruptions facing all manufacturers.

II. The Board Should Adopt a Reciprocal Switching Rule

The Board has the authority to grant reciprocal switching when it is in the public interest or when it is necessary to ensure competitive rail service. Under the current regulatory framework, the high bar placed on rail customers has resulted in zero successful reciprocal switching requests, effectively blocking ILMA members and other shippers from choosing the best combination of service and rates. The freight rail market is more concentrated now than when the Board first promulgated its rules, with complete changes to the way the freight rail market operates. The Board's own data show the significant percentage increases in rail rates for shippers, even when adjusted for inflation, accompanied by significant increases in the number of service issues and disruptions. Many ILMA members, without access to reciprocal switching, simply feel captive to their carriers.

By lowering the hurdles shippers must meet in order to obtain reciprocal switching, the Board would allow more American businesses, including ILMA members, to choose freight rail carriers based on competitive factors, especially service and rates. Allowing reciprocal switching – either in the public interest or to stimulate competition – will improve relationships between the railroads and their customers. ILMA hopes that prompt action by the Board will help ease the ongoing supply chain problems, especially for essential goods.

As the Board notes, the rule changes would not result in shippers obtaining “unfettered access” to rail lines. Instead, reciprocal switching would be allowed on a case-by-case basis. The Board's decision would not be foisted on the railroads, as it creates a rebuttable presumption. The rule changes would switch the burden from shippers, who are often captive to carriers and afraid of retaliation, to the carriers who are in the best position to rebut the claim that they cannot offer

reciprocal switching without negatively impacting shippers in each case. This is especially true as the rule, as proposed, is only limited to the seven Class 1 railroads currently operating in North America.

III. Conclusion

While ILMA would support extending the rule changes to all freight railroads, the finalization of the rule is overdue and implementation would provide important data to the Board for future rulemakings. The Association asks the Board to finalize reciprocal switching rules and consider other steps which would provide shippers with better access to competitive rail services.

Sincerely,

A handwritten signature in black ink, appearing to read "Holly Alfano", with a long horizontal flourish extending to the right.

Holly Alfano
CEO