

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. EP 711 (Sub-No. 1)

RECIPROCAL SWITCHING

COMMENTS

submitted by

NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS

Dated: February 14, 2022

The National Association of Chemical Distributors (NACD) respectfully submits these comments in response to the Surface Transportation Board's ("Board" or "STB") Notice of Public Hearing on March 15 and 16, 2022, concerning STB's proposed reciprocal switching regulations in Reciprocal Switching, Docket No. EP 711 (Sub-No. 1) et al. (NPRM).

NACD commends the Board for its attention to this longstanding rulemaking proceeding to revise these antiquated rules that have prevented the use of reciprocal switching arrangements to facilitate rail-to-rail competition, as envisioned by the Staggers Act. The Board's decision to reform its current reciprocal switching policy has legal justification and is strongly supported as a policy matter based on the substantial consolidation and greatly improved financial condition of the rail industry that have occurred over the past 30 years. NACD strongly supports revising the Board's current reciprocal switching rules to provide shippers whose facilities are captive to a single class I railroad with the opportunity to increase rail competition through reciprocal switching. Many captive rail customers endure monopolistic behavior from their rail carrier, including year-over-year rate increases with limited leverage to negotiate despite

unreliable rail service. Expanding reciprocal switching arrangements would allow some captive shippers the opportunity to switch their traffic to an alternative carrier that can provide better service at more competitive rates, which should also incentivize incumbent carriers to improve their service offerings.

I. Identity and Interest of the National Association of Chemical Distributors

The National Association of Chemical Distributors is the premier trade association for the U.S. chemical distribution industry, representing nearly 450 chemical distributors and their supply chain partners. NACD members represent more than 85 percent of the chemical distribution capacity in the nation and generate 90 percent of the industry's gross revenue. NACD members blend, re-package, warehouse, transport, and market chemical products made by large-quantity manufacturers to 750,000 end-users in nearly every industry sector, from cosmetics to automotive and from paints and coatings to food and water treatment. NACD members operate in nearly every U.S. state through more than 3,000 facilities and are responsible for more than 75,000 direct and indirect jobs in the nation. NACD members are predominantly small regional businesses, many of which are multi-generational and family owned.

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution[®], the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations.

II. Use of Rail Transportation by National Association of Chemical Distributors Members

According to the results of a recent NACD member survey (Survey), as of 2021, nearly 80 percent of NACD member facilities that depend on rail service have access to only one carrier, while only 20 percent of the facilities were served by multiple rail carriers. The Survey results were up from 65.4 percent at the beginning of 2019, and this was before the merger of the Kansas City Southern and Canadian Pacific. As expected, the Survey confirmed that NACD members served by a single rail carrier paid higher freight prices compared to NACD members that are served by multiple rail carriers. Reported

rate increases were consistently higher for shipments/receipts by those facilities with only a single carrier, when compared to those with multi-rail service. In addition to higher rates, NACD member companies with access to just a single rail carrier consistently reported problems with service. Specifically, those facilities had problems obtaining rail service due to the lack of capacity, a figure that reached over 81 percent of facilities by the first half of 2021 during the COVID-19 crisis, and problems with last mile issues.

III. Need for Increased Rail Competition Remains

The need for increased rail competition has not diminished since the Board's 2016 proposed rulemaking. In fact, NACD members have reported facing many challenges at captive rail facilities. Several NACD members noted facing significant issues with reliability of service. Specifically, NACD members noted that many of the carriers that solely serve their facilities frequently do not provide railcars on-time and when requested; railcars are delivered on unscheduled days; and they experience improper railcar placement upon arrival and incomplete tracking of their railcars. NACD members with captive facilities believe their rail carriers can dictate pricing and provide inconsistent service knowing the captive facility has no choice due to not having any other service options.

Additionally, NACD members with captive facilities, which are eventually serviced by a short line, reported their inability to work efficiently and collaboratively with Class 1 rail providers. A significant example of a challenge they face is the positioning of railcars, which is solely at the discretion of the Class 1 rail providers, without any communication.

Increasing rail competition via reciprocal switching arrangements would substantially benefit NACD members' impacted facilities. Increasing competition through reciprocal switching arrangements would provide opportunities to negotiate pricing and incentivize improved service performance. By having the ability to operate with reciprocal switching arrangements, NACD members at sole-served facilities would have the option to compare the incumbent carriers' pricing and service to an alternative

provider that already operates at a nearby interchange, rather than being subjected only to “take-it-or-leave-it” price and service offerings.

It is a basic principle in economics that competition will incentivize more reasonable rate negotiations and service improvements, as well as potential investment opportunities at captive facilities. NACD member companies indicated they see potential opportunities where implementation of reciprocal switching would be possible at facilities that are currently captive. With the implementation of reciprocal switching at some captive facilities, NACD members anticipate more competitive pricing; increased reliability of service for on-time deliveries; and improved timing for their railcars getting to them as there would be more options for yards to service. The Board’s measured case-by-case approach to evaluating reciprocal switching requests will ensure such arrangements are only implemented where the operations would be safe and would improve and not hinder service.

IV. Precision Scheduled Railroading (PSR) Has Not Materially Improved Rail Service

According to NACD members surveyed, the implementation of precision scheduled railroading (PSR) has resulted in no noticeable beneficial effect on their rail service. Several NACD member companies have reported that rail service at certain facility locations has, in fact, worsened. NACD members surveyed were in full agreement that PSR implementation has not changed their company’s need for increased rail competition at their company’s captive facilities to address service challenges and provide opportunities for more competitive rates.

V. Conclusion

For the foregoing reasons, the National Association of Chemical Distributors respectfully requests that the Board move forward promptly to adopt new reciprocal switching rules. If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer C. Gibson". The signature is fluid and cursive, with the first name "Jennifer" written in a larger, more prominent script than the last name "Gibson".

Jennifer C. Gibson

Vice President, Regulatory Affairs