

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

RECIPROCAL SWITCHING

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

**WRITTEN TESTIMONY OF
NORFOLK SOUTHERN RAILWAY COMPANY**

Lorri J. Kleine
Thomas E. Zoeller
Hanna M. Chouest
Julianne C. Freeman
NORFOLK SOUTHERN RAILWAY
COMPANY
650 West Peachtree Street N.W.
Atlanta, GA 30308

Dated: February 14, 2022

Norfolk Southern Railway Company (“NS”) hereby submits written testimony in response to the Board’s notice of public hearing served on December 28, 2021 in this proceeding. As explained in NS’ concurrently filed supplemental comments, NS has actively participated in this long-standing proceeding and continues to have serious concerns about the Board’s 2016 proposal.¹ Although NS has identified numerous concerns in its submissions and ex parte meetings, NS intends to focus its hearing testimony on areas of particular interest and concern for NS. The following is a written summary of the testimony that its witnesses will provide on behalf of NS at the upcoming hearing.

Testimony of Cynthia M. Sanborn

Cynthia M. Sanborn, Executive Vice President and Chief Operating Officer, has submitted a verified statement in NS’ concurrently filed supplemental comments. At the hearing, she will explain the complexity of network operations and the unintended consequences of the Board’s 2016 proposal. She will explain the operational challenges associated with an expanded switching rule, the harm such a rule would impose on all customers, and the lack of fungibility associated with network resources. Ms. Sanborn will also explain why the Board’s proposed case-by-case approach does not alleviate her concerns from an operational perspective.

Testimony of Dr. Mark Israel

Dr. Mark Israel of Compass Lexecon has submitted a verified statement in NS’ concurrently filed supplemental comments. At the hearing, he will explain why

¹ *Reciprocal Switching*, Docket No. EP 711 (Sub-No. 1) (STB served July 25, 2016).

differential pricing is necessary to provide a competitive return on capital and why a broad forced switching proposal generates substantial costs and risks with no clear benefit. Dr. Israel will discuss overall rail prices, return on capital, and modal competition, as well as the potential impacts on NS. Dr. Israel concludes that there is no compelling reason to adopt the Board's proposal, but that if the Board were to proceed, it must account for product and geographic competition and access pricing must account for opportunity costs to preserve differential pricing and the associated return on capital.

Testimony of Professor David Sappington

Professor David Sappington of the University of Florida has previously submitted a verified statement in this proceeding.² At the hearing, he will explain how differential pricing and maximum price regulation together have reinvigorated the rail industry to the benefit of shippers and railroads alike. Professor Sappington will explain why, if forced switching is mandated, the compensation should be set to preserve the contributions in the prevailing rate structure. Professor Sappington will explain why access prices that reflect efficient component pricing preserve prevailing contributions and promote competitive neutrality, and why cost-based access pricing would be inappropriate in most circumstances.

² Opening Comments of Norfolk Southern Railway Company, *Reciprocal Switching*, Docket No. EP 711 (Sub-No. 1) (filed Oct. 26, 2016), Verified Statement of Professor Mark Armstrong and David Sappington.

Testimony of Raymond A. Atkins

Raymond A. Atkins of Sidley Austin LLP will address the implications of moving away from the current regulatory framework aimed at remedying instances of anticompetitive abuse to a no-fault system, as the Board proposed in 2016. Mr. Atkins will explain the legal and economic principles that should govern compensation, should the Board be required to establish compensation.

Respectfully submitted,

/s/ Hanna M. Chouest

Lorri J. Kleine

Thomas E. Zoeller

Hanna M. Chouest

Julianne C. Freeman

NORFOLK SOUTHERN RAILWAY COMPANY

650 West Peachtree Street N.W.

Atlanta, GA 30308

Dated: February 14, 2022