

BEFORE THE SURFACE TRANSPORTATION BOARD

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

RECIPROCAL SWITCHING

Comments of The Dow Chemical Company

303873

ENTERED
Office of Proceedings
February 14, 2022
Part of
Public Record

Jeffrey O. Moreno
Jason D. Tutrone
Thompson Hine LLP
1919 M Street, NW Suite 700
Washington, DC 20036
(202) 331-8800

Jeff.Moreno@ThompsonHine.com
Jason.Tutrone@ThompsonHine.com

Counsel for The Dow Chemical Company

Dated: February 14, 2022

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Interest of The Dow Chemical Company

The Dow Chemical Company is a leading multi-national manufacturer of chemical products that operates 106 manufacturing sites in 31 countries and employs approximately 36,000 people. It depends upon railroads to provide safe, secure, reliable, and economic transportation of raw materials and products to, from, and between its sites throughout the United States.

Dow's largest facilities in the United States are captive to a single railroad and could benefit from competitive switching. Although the carriers serving these facilities have nearby interchanges with competing carriers, the incumbents typically choose to keep the traffic on their line to the destination or, for joint-line moves, a more distant interchange. This produces unnecessarily circuitous routings for many Dow movements and erodes service levels below those that Dow receives where it is open to rail competition. It also increases congestion on the rail network above levels that would exist with competition and prevents Dow from routing its traffic around service disruptions that arise on the incumbent carriers' lines.

Dow has a location in Canada that is open to Canadian interswitching. Interswitching is essentially competitive switching, except that it provides shippers with automatic access to competing carriers who interchange with the incumbent carrier within a 30 km radius of the shipper's facility. Dow believes that its experience with interswitching—which works well and rarely results in the incumbent losing traffic—will be helpful to the Board.

Comments

Dow submits these comments pursuant to the Board's notice of public hearing served on December 28, 2021, in this proceeding. Dow applauds the Board for advancing this proceeding and urges it to adopt its proposed competitive switching rules, subject to Dow's prior comments,¹ without delay.

These comments provide the Board with Dow's practical insight demonstrating that shippers have an urgent need for the proposed rules and adopting them without delay poses little risk to rail service.

Part I explains that Dow continues to urgently need revised competitive switching rules. Railroads route Dow's captive traffic hundreds of thousands of unnecessary miles each year, resulting in unnecessary, long transits and operational inefficiency. Additionally, rail service disruptions impacting Dow's captive traffic have continued to arise, seemingly with greater frequency. These disruptions cause Dow's captive traffic to have high transit variability, which jeopardizes Dow's and its customers' business operations, requires Dow to maintain larger inventories and railcar fleets, and often requires Dow to use emergency truck transportation. Access to competitive switching would help address these issues by promoting efficient routing and competitive service levels. In addition, it would provide Dow with options to temporarily divert its rail traffic when service disruptions arise.

¹ Dow Reply (Jan. 13, 2017); Dow Opening (Oct. 26, 2016).

Part II explains that Dow has strong incentives to use competitive switching only where it does not impair rail service. Reduced service levels impose considerable risks upon Dow and its customers; even a modest reduction in service will likely more than offset any benefit from a competitive switch. Dow's experience with Canadian interswitching underscores this point. Where interswitching is available, the incumbent has retained nearly all Dow traffic under multi-year agreements that prevent Dow from flip flopping the traffic between the incumbent and a competitor. Additionally, the resources needed to pursue competitive switching, especially when it may impair services, are high enough to discourage Dow from pursuing competitive switching indiscriminately or where service issues might arise.

As a member of the American Chemistry Council (ACC), Dow also fully supports the written testimony jointly submitted by the Coalition Associations.

I. Dow's need for competitive switching has not waned since the Board issued the proposed rules in 2016.

Dow continues to have an urgent need for competitive switching. Nothing indicates that this will subside.

First, Dow still has large facilities that are captive to a single railroad that insists on routing Dow's traffic over hundreds of thousands of unnecessary route miles annually. If Dow could obtain a competitive switch for this traffic, it could greatly reduce transit times, lowering Dow's fleet and inventory requirements. A competitive switch would also reduce the number of Dow's cars on the rail network, freeing rail capacity to the benefit of Dow, the rail network, and all rail shippers.

Second, competitive switching could mitigate service issues that regularly disrupt Dow's captive traffic. Since the Board issued the proposed rules, Dow has experienced disruptions caused by railroads adopting precision scheduled railroading, COVID-19 challenges, and natural events. If anything, these disruptions appear to occur with increasing frequency, especially as railroads continue to pursue lower operating ratios by reducing service, employees, and equipment. And when these disruptions involve the carrier to which Dow's traffic is captive, Dow is unable to shift the affected traffic to a competing carrier while the incumbent restores service to acceptable levels. Competitive switching would allow Dow to make these shifts, which help alleviate congestion, mitigate supply chain disruption, and foster service restoration.

A. Competitive switching could help eliminate hundreds of thousands of route miles annually for Dow's captive rail traffic.

Railroads that serve Dow's captive facilities commonly route the facilities' joint-line traffic on circuitous routes to out-of-the-way gateways. This adds hundreds of thousands of unnecessary route miles to Dow's shipments each year, causing Dow, its customers, and shippers to incur increased congestion on the rail network, added fleet and product inventory requirements, and additional operational burdens. Access to competitive switching can eliminate a large portion of this unnecessary mileage.

Dow's Taft and Plaquemine facilities are prime examples of locations where competitive switching would eliminate significant inefficiency. Both facilities are captive to Union Pacific Railroad and sit 30 and 87 rail miles, respectively, from

New Orleans, LA, where Union Pacific interchanges traffic with every eastern Class I railroad. Yet Union Pacific interchanges two thirds of Taft's gateway traffic and 60% of Plaquemine's gateway traffic at East St. Louis, which is 800 rail miles from Taft and 743 rail miles from Plaquemine. This results in excessively long routings for many Taft and Plaquemine shipments to the eastern United States. For example, Union Pacific routes traffic from Taft to Carteret, NJ, on a 1,938 rail-mile trip via East St. Louis even though routing the traffic through New Orleans would decrease the route distance by 492 rail miles—a 25% reduction. Similarly, Union Pacific routes traffic moving from Plaquemine to Institute, WV, on a 1,451 rail-mile trip via East St. Louis, even though routing this traffic through New Orleans would save 227 rail miles—a 16% reduction. For the top ten Taft and Plaquemine lanes, by volume, that Union Pacific routes through East St. Louis, competitive switching to New Orleans would have eliminated over 335,000 route miles in 2021.

This excessive route mileage has significant implications for Dow and the public. By increasing transit times, it causes the number of Dow shipments in transit to increase, which requires Dow to maintain a larger railcar fleet and product inventory. Increasing Dow's railcar fleet, which consists of all private cars, would also involve providing infrastructure for storing those cars. Additionally, unnecessary route mileage leads to unnecessary emissions and extended hauls of hazardous materials.

This excessive route mileage is also detrimental to shippers at large and the rail network. In recent ex parte meetings with Board members about this

proceeding, Union Pacific provided a slide deck opposing changes to the Board's competitive switching rules, alleging that competitive switching would add transit time and "adding transit increases inventory, potentially resulting in network congestion."² The slides further explain that increased car inventory decreases network fluidity, making rail less competitive with other transportation modes. Here, Union Pacific's own inefficient routing protocols are causing increased transit times and thus leading to the car inventory issues that can increase network congestion and make rail less competitive with other modes.

The fact of the matter is that Union Pacific's routing protocols at Taft and Plaquemine demonstrate that, absent competitive switching reforms, Union Pacific and other railroads have a license to maximize profits from their captive traffic by engaging in the very inefficiency that they allege competitive switching will create. Competitive switching is a necessary safeguard against this inefficient behavior, which harms the entire rail network.

B. Dow continues to face numerous rail-service disruptions that it could mitigate with competitive switching.

Dow and other shippers often face severe rail-service disruptions that competitive switching could mitigate. Since the Board issued the 2016 proposed rules, nothing has changed to indicate that these disruptions will occur any less frequently in the future. If anything, Dow has seen an uptick in the number of

² *E.g.*, Summary of Ex Parte Meeting between Union Pac. R.R. and Board Member Schultz 3-8 (Nov. 18, 2021).

disruptions, which underscores that Dow and the shipping community need competitive switching reforms now.

By its nature, rail transportation is prone to service disruptions. Weather and natural events frequently destroy or damage rail infrastructure or pose operational challenges. It goes without saying that these events are not going away.

Further, rail carriers continue to seek profits at the risk of their operations. Since 2016, multiple Class I railroads have implemented lean operating models, like precision scheduled railroading, under which they attempt to sustain operations with a skeleton crew and minimal equipment. While their goal is to squeeze every ounce of profit from their traffic, despite their promises of more reliable and predictable service, the result has been rail networks with little resiliency and frequent service disruptions or downgrades. In Dow's opinion, precision scheduled railroading and similar operating models have not improved service and, instead, will continue to cause serious service disruptions that burden all shippers.

Competitive switching will provide Dow and other shippers with important flexibility to address the impact of these and other service disruptions on their captive traffic. A common thread among disruptive events is that the impacted railroad does not have the resources or infrastructure to handle normal traffic levels. Although shifting some traffic to another carrier could alleviate the problem and hasten the impacted carrier's recovery, Dow's captive traffic must suffer through the disruption. Competitive switching, however, would allow Dow to divert its impacted captive traffic to a competing railroad near the traffic's origin or

destination and circumvent the disruption. This not only benefits Dow, but it also benefits the rail network at large by reducing demand on the incumbent carrier so that it can recover faster.

At bottom, competitive switching offers Dow and other shippers important protection from rail service disruptions, which show no signs of slowing.

II. Dow and other shippers' use of competitive switching is likely to maintain or improve rail service levels, not impair them.

Railroads have postulated that shipper use of competitive switching under the proposed rules would degrade rail service. These claims overlook that shippers face significant burdens and risks if they impair rail service by using competitive switching. The claims also are inconsistent with Dow's use of Canadian interswitching, which nearly always results in the incumbent carrier retaining nearly all its traffic under multi-year agreements. And the claims ignore that pursuing competitive switching may be costly for the shipper, especially if degraded service is even remotely likely. Ultimately, Dow anticipates that its and other shippers' use of competitive switching would nearly always maintain or enhance existing rail service levels.

A. Dow has strong incentives to seek competitive switching only where it will maintain or improve rail service levels.

Competitive switching will rarely make sense for Dow and other shippers if it degrades rail service. Service deterioration imposes burdens and risks on Dow that rise rapidly and will quickly outweigh any benefits that competitive switching offers.

When rail service deteriorates, transit times and service variability increase. This has several significant consequences for Dow.³

One, it increases Dow's railcar-fleet and rail-infrastructure needs. As explained, Dow needs more railcars to handle its traffic as transit times increase. Similarly, it also needs more railcars as variability increases because its fleet will need to handle transit-time spikes. Increased variability also increases Dow's railcar storage needs because Dow will need to hold a larger number of cars in anticipation of transit-time spikes.

Two, it increases Dow's and its customers' inventory levels. As transit times increase, the amount of inventory tied up in transit also increases. Also, as variability increases, added inventory will be needed as a safety buffer for transit-time spikes.

Three, it increases Dow's need for emergency truck shipments to prevent supply disruptions to its customers. As service variability increases, so does the risk that shipments will arrive after they are needed, causing operational disruptions. To keep its customers supplied when facing an unexpected late shipment, Dow commonly must turn to emergency truck services. Dow purchases these services on the spot market, and they may require multiple drivers per truck to expedite transit. Moreover, replacing a single railcar to keep a customer supplied requires

³ In ex parte meetings with Board Members, Union Pacific provided a presentation highlighting that its customers value consistent, reliable service. *E.g.*, Summary of Ex Parte Meeting between Union Pac. R.R. and Board Member Schultz 7 (Nov. 18, 2021).

multiple trucks (e.g., generally 4 trucks are equivalent to one railcar). Ultimately, Dow estimates that frequent truck shipments to address rail service issues would alone negate the benefit of competitive switching.

Four, it poses significant commercial risks for Dow and its customers. Increased transit time and service variability can jeopardize business operations by delaying inbound raw materials or causing shortages of empty railcars necessary to load and ship products. They also make competing for business more difficult. Dow's customers value reliable delivery because it reduces their operational risk and the storage of both railcars and inventory. This reliability is more challenging to provide as service degrades.

In sum, pursuing competitive switching where it will erode rail service will rarely produce net benefits for Dow or many other shippers.

B. Based on Dow's experience with Canadian interswitching, competitive switching will rarely result in an incumbent carrier losing traffic or performing an additional switch.

Many railroad commenters have speculated that competitive switching will cause them to lose traffic and engage in unnecessary switching events that will bog down their networks.⁴ They overlook that competitive switching's promise is competition, not more switching. And Dow's experience with Canadian

⁴ See, e.g., Summary of Ex Parte Meeting between Norfolk S. Ry. and Board Member Schultz 1-2 (Dec. 21, 2021); Summary of Ex Parte Meeting between Union Pac. R.R. and Board Member Schultz 4, 8 (Nov. 18, 2021); Summary of Ex Parte Meeting between Ass'n of Am. R.Rs. and Board Member Schultz 2, 4 (Sept. 28, 2021).

interswitching demonstrates that an incumbent carrier will nearly always retain its traffic.

For joint-line movements, the likelihood that competitive switching will subject an incumbent carrier to additional switching appears low. Dow foresees that competitive switching in this context would merely shift the interchange location for the incumbent. The example of Dow's Taft and Plaquemine plants discussed in Part I.A. above illustrates this point. Competitive switching would shift the interchange location between Union Pacific and its eastern railroad connections from East St. Louis to New Orleans.

For single-line movements, incumbent carriers typically have advantages that should enable them to retain traffic over a joint-line movement that adds another carrier. One is that the incumbent probably can provide more reliable service because it does not have to coordinate with another carrier. Another is that the incumbent probably can provide a faster transit because competitive switching will add a switch event to the movement. These advantages are significant because, as explained, Dow's operational burdens and risks decrease significantly as service becomes more reliable and transit times decrease.

Dow's own use of Canadian interswitching underscores that competitive switching will rarely shift traffic away from an incumbent. Dow has access to interswitching at its Fort Saskatchewan, Alberta, facility. And it has consistently maintained this facility's traffic with the incumbent under multi-year agreements.

C. Where Dow obtains competitive switching, shifting traffic between carriers will rarely be advantageous or feasible for Dow.

Dow questions railroad concerns that shippers with access to competitive switching will flip flop their traffic between the incumbent and competing carriers.⁵ Absent a significant service disruption, this would not be advantageous or feasible for Dow.

First, consistent rail service is critical for Dow's and its customers' sites, and Dow would be inviting inconsistency by shifting back and forth between an incumbent carrier and its competitor. For such constant shifting to work, Dow would have to constantly monitor the rail networks of the incumbent carrier and competitor, develop communications channels with both carriers and turn them on and off seamlessly, and learn and follow the procedures of multiple carriers. The carriers also would need to establish protocols for working together, only to stop and restart this relationship as the traffic shifts. While this is all possible, it provides too many unnecessary opportunities for errors that lead to inconsistent service. And as explained, burdens and risks increase rapidly for Dow and its customers as service variability increases.

Second, establishing stable partnerships with railroads can enhance rail service and outcomes. Long-term partnerships entice railroads to work toward

⁵ See Summary of Ex Parte Meeting between Ass'n of Am. R.Rs. and Vice Chairman Primus 4 (Sept. 28, 2021) (referring to argument that competitive switching on demand would degrade the rail network).

improving service. They also enable Dow and railroads to work together to pursue broader goals that are important to Dow, such as sustainability and supplier diversity initiatives. But these partnerships would be difficult to form if Dow shifts traffic frequently between an incumbent carrier and its competitor.

Third, Dow favors multi-year rail-transportation agreements that would limit its flexibility to shift traffic. By agreeing to commit its traffic to a carrier over an extended period, Dow fosters the consistent service and railroad partnerships that it desires. These agreements also typically allow Dow to obtain better pricing because they provide carriers with predictable volumes. While the agreements would likely provide Dow with flexibility to shift some traffic, such as to address service disruptions, they would still make shifting traffic between carriers mostly infeasible.

In fact, Dow's use of interswitching in Canada indicates that Dow would commit traffic under long-term service agreements where it has access to competitive switching. For interswitching-eligible traffic, Dow generally enters into multi-year agreements that include a traffic volume commitment that broadly prevents Dow from shifting traffic between the incumbent carrier and its competitor.

At bottom, using competitive switching to shift traffic back and forth between carriers is a recipe for supply disruptions. Moreover, it is not feasible under the long-term rail-transportation agreements that Dow would seek.

D. Dow will be selective when seeking competitive switching because the process for obtaining it involves risk and cost.

Competitive switching is not automatic. Shippers cannot obtain it without an administrative proceeding, which can be costly and lengthy and affords no guaranteed outcome. Dow and other shippers thus have a strong incentive to carefully select the locations for which they seek competitive switching.

Regardless of the standards in the competitive switching rules that the Board adopts, competitive switching requires an administrative proceeding. Under 49 U.S.C. § 11102(c), the Board may require competitive switching only upon finding it is “practicable and in the public interest” or “necessary to provide competitive rail service.” It follows that Dow and other shippers who request competitive switching will need to pursue an administrative proceeding to establish one of these statutory bases.

Undertaking an administrative proceeding to obtain competitive switching will require time and resources to pursue. Even if the Board adopts evidentiary presumptions, shippers will still need to establish certain facts and respond to railroad reply arguments. Given the strenuous railroad opposition to the Board’s proposed rules, a railroad involved in a competitive-switching proceeding will likely mount a fierce opposition that includes subjecting the shipper to discovery about the shipper’s movements and other commercially sensitive business information, alleging service disruptions that the shipper must rebut, and delaying any award through extensive appeals. Further, if the Board awards competitive switching, it

may need to establish the switch-fee arrangement that will apply between the carriers, which adds uncertainty to the process.

Dow and other shippers must carefully consider these potential costs, burdens, and risks before seeking competitive switching. The upfront costs of an administrative proceeding to obtain competitive switching will discourage cases unless the anticipated benefits of switching are high and the factual basis for competitive switching is strong. Thus, for Dow and other shippers, competitive switching will make little sense except for movements and/or locations where the anticipated benefits are high.

In short, the proposed rules will not produce a free-for-all. Dow and other shippers will still need to invest resources to obtain competitive switching, and this will naturally cause them to be selective when deciding whether and where to seek competitive switching.

E. Under the proposed standards, the Board will not grant Dow's switching requests if the incumbent can show that switching is not feasible or will unduly hamper its ability to serve other carriers.

The Board should not overlook that the proposed rules contain an important safeguard against competitive-switching awards that would jeopardize rail service. Specifically, they allow railroads to defeat competitive switching requests by establishing that the proposed switching is not feasible or will unduly hamper the

carrier's ability to serve its shippers.⁶ This discourages Dow from seeking switching that might create service issues for other shippers.

This safeguard increases the cost and uncertainty when seeking a competitive switch. Where impaired service is a possibility, the railroad has little to lose by arguing that the switch would unduly hamper its ability to serve other traffic. Even if the railroad's claim is accurate, Dow would need to reply to the railroad's claim, driving up the cost of the switching proceeding. Dow would also face a higher risk that the Board would deny its request. This combination of higher costs and risks would make pursuing a switch unattractive unless it offered substantial benefits, which is unlikely if there are legitimate questions about whether it impairs rail service.

III. Conclusion.

The Board should be confident that adopting its proposed competitive switching reforms will produce significant service and economic benefits for certain captive traffic. It should also be confident that shippers will not use competitive switching in a way that would broadly erode rail service. Dow thus respectfully urges the Board to issue final competitive-switching rules on the current record and consistent with Dow's prior comments in this proceeding.

⁶ *Reciprocal Switching*, EP 711 (Sub-No. 1), slip op. at 41-42 (STB served July 27, 2016).

Respectfully submitted,

/s/ Jason Tutrone

Jeffrey O. Moreno

Jason D. Tutrone

Thompson Hine LLP

1919 M Street, NW Suite 700

Washington, DC 20036

(202) 331-8800

Jeff.Moreno@ThompsonHine.com

Jason.Tutrone@ThompsonHine.com

Counsel for The Dow Chemical Company

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