

**Surface Transportation Board
Ex Parte 711 (Sub No. 1)**

**Summary of Ex Parte Meeting between The Dow Chemical Company
and Vice Chairman Michelle Schultz**

March 21, 2022

ENTERED
Office of Proceedings
March 31, 2022
Part of
Public Record

Dow Attendees:

- Jacqueline Faseler, Supply Chain Sustainability & EHS Global Director
- Michael Gebo, Supply Chain NA Rail Logistics Director
- John Heater, Supply Chain Global Advocacy Leader
- Jeffrey Hymel, Senior Category Leader – Rail Services
- Jason Tutrone, Counsel to Dow

STB Attendees:

- Michelle Schultz, Board Vice Chairman
- Michael Small, Attorney Advisor

Meeting Summary:

Dow thanked Vice Chairman Schultz for the opportunity to meet with her and expressed that reciprocal-switching reform has long been an important topic for Dow. Vice Chairman Schultz thanked Dow for meeting with her.

Dow explained that its rail traffic is largely captive to a single rail carrier. It further explained that trucks do not provide an effective competitive alternative for this traffic. Dow also explained that rail captivity generally results in a significant rate premium over competitive traffic and provides less incentive for carriers to work with Dow regarding service levels for Dow's captive traffic.

Dow observed that rail service levels are important, and service reliability is critical for Dow and its customers. As an example of the impact of captivity on service, Dow walked through the Taft and Plaquemine routing example in its written comments, explaining that these captive facilities are a short distance from the New Orleans gateway, but most of the facilities' gateway traffic is routed to a more distant gateway. This adds hundreds of additional miles to routings for this traffic, increases transit times, increases the number of railcars required for this traffic, and causes hazardous material shipments from these facilities to travel longer distances than necessary. Vice Chairman Schultz asked what would be a reasonable distance for a reciprocal switch. Dow explained that it believed that it felt both facilities were within a reasonable distance of New Orleans and that it supported the Coalition Associations' definition of reasonable distance.

Dow explained that interswitching involving its only single-served Canadian facility (Fort Saskatchewan) has been largely successful for promoting rail competition. Vice Chairman Schultz asked whether Dow would expect differences with reciprocal switching in the United States. Dow responded that the operations involved with interswitching generally would be identical to switching that occurs in the United States, and in Canada, carriers seem to benefit from interswitching. Dow further explained that it enters into multiyear contracts where interswitching occurs, that the incumbent almost always retains traffic, and that very little traffic shifts between the incumbent and competing carrier from contract to contract. Vice Chairman Schultz and Dow further discussed that contracts for traffic open to interswitching include service commitments that are atypical for other traffic.

Dow explained that it would avoid using reciprocal switching if it would place stress on the rail network. Further, Dow works with carriers to understand their network performance and promote stable and resilient rail service. As an example of how reciprocal switching could help address service issues and how shippers would likely use it to address those issues, Dow discussed how interswitching has provided an opportunity to move Canadian Pacific traffic to Canadian National temporarily to avoid impacts from the Canadian Pacific worker strike, and how it has extensively coordinated with both carriers concerning the temporary shift of traffic. Dow further explained that its use of interswitching to address service problems is temporary and generally a last resort because Dow does not want to disturb its long-term relationships with the incumbent and competing carriers, which extend beyond the traffic involved in the switch.

Vice Chairman Schultz asked whether Canadian National had been able to meet Dow's need for service involving the traffic affected by the Canadian Pacific strike. Dow explained that Canadian National has been cooperative regarding the traffic, likely because Dow has not used interswitching solely to drive rates lower, which can damage long-term carrier relationships. Vice Chairman Schultz followed up by asking whether other shippers are on the line serving Fort Saskatchewan and if that poses challenges as Canadian National absorbs extra volume. Dow responded that it would not provide volume that Canadian National could not handle and that Dow helps enable Canadian National to absorb the traffic by having transparent relationships with its carriers and communicating to them that shifts in these circumstances will be temporary.

Vice Chairman Schultz asked whether the standard for awarding reciprocal switching should be fault-based. Dow explained that the standard under the necessary to provide competition prong should focus on whether there is effective competition. It explained that it should not be prevented from using a competing carrier that is willing to provide an innovative service offering just because the incumbent is not experiencing service issues. Vice Chairman Schultz also asked whether the reciprocal switching rules should include a captivity standard. Dow responded that the standard under the competition prong should be whether it has access to effective competition.

Dow explained that it had strong incentives to be selective when seeking reciprocal switching, noting that it was unlikely to consider it except at a few locations. Dow further explained that it was not beneficial to use reciprocal switching in a way that would disturb long-term relationships or ignore the implications for the rail network. Reciprocal switching would promote good relationships with railroads by incentivizing them to be collaborative, innovate, and improve sustainability.

Vice Chairman Schultz asked what type of innovation from a competing carrier would incentivize Dow to use reciprocal switching. Dow responded with an example of how interswitching has incentivized an incumbent to improve visibility tools and establish a team to monitor and address issues involving the shipment pipeline.

Dow explained that reciprocal switching is unlikely to deter railroad investment because railroads invest heavily in Dow's competitive traffic where Dow is willing to provide return commitments that provide an incentive for the investment. It provided an example of investment that a railroad made to obtain greater access to a dual-served Dow facility, explaining that Dow made volume and contract duration commitments in return to encourage the investment.

Vice Chairman Schultz asked about the reasons why a competing railroad might refuse to participate in a reciprocal switch. Dow responded that carriers generally want access to Dow's sites. It further explained that it would want to make sure that a reciprocal switch would be a good fit for a competing carrier. Dow does not want to disrupt its customers. It also does not want to disrupt the rail network since that would impact the reliability and resiliency of Dow's traffic routings, which are critical to its organization.

Vice Chairman Schultz asked whether reciprocal switching under 49 C.F.R. § 1147.1 would be sufficient to address service issues. Dow responded that reciprocal switching under that rule was intended to address discrete service issues on a temporary basis and, thus, does not encourage an incumbent to provide competitive service levels. In contrast, 49 U.S.C. § 11102(c) allows the Board to order reciprocal switching upon finding it is necessary to provide competitive service, and the purpose of this is to encourage competitive service levels, including commitments to provide competitive service levels. Dow believes that reciprocal switching should be available to promote service competition as contemplated under the competition prong at 49 U.S.C. § 11102(c).