

SURFACE TRANSPORTATION BOARD

Ex Parte 711 (Sub-No. 1)

Summary of Ex Parte Meeting between Association of American Railroads and

Surface Transportation Board Vice Chairman Michelle Schultz

April 22, 2022

AAR Attendees:

- Tim Strafford, Associate General Counsel and Corporate Secretary
- Fred Miller, Assistant General Counsel and Government Affairs Liaison
- Ben Horwich, Counsel to Association of American Railroads

STB Attendees:

- Michelle Schultz, Vice Chairman
- Christopher Diamond, Attorney Advisor

Summary:

AAR and Vice Chairman Schultz discussed the issue of whether rules related to reciprocal switching should be written to grant new rights to shippers, or instead to identify particular problems (relating to conduct, service, or otherwise) and examine whether a particular remedy would ameliorate the identified problems. They further discussed the current competitive access rules, the *Midtec* standard, the service rules at 49 C.F.R. Parts 1146 and 1147, the underlying statutory provision at 49 U.S.C. 11102(c), and the relationship and overlap among those various authorities.

Vice Chairman Schultz expressed her interest in input on ways that the service regulations at Part 1147 rules could be made more workable. She invited input on how to define substantial measurable deterioration in service or service inadequacy, and asked in particular what metrics might be useful as presumptions in evaluating claims under those rules. Vice Chairman Schultz noted the challenges in developing a one-size-fits-all rule and in defining the situation without being overinclusive or underinclusive. AAR observed in response that changes in service levels can have various causes and that a rule that tries to solve all these problems at once is less effective than one that focuses on an individual problem. More broadly, Vice Chairman Schultz encouraged AAR and other stakeholders to engage in dialog to provide input to the Board on these questions, including appropriate regulatory language. She also expressed interest in hearing from shippers with diverse viewpoints in the process, including shippers that may be concerned about negative impacts from forced switching orders.

Vice Chairman Schultz asked for AAR's views on a rule that had provisions specific to agricultural shippers with longer distances between their facilities and potential switching

locations. AAR responded that it would be possible, using existing data sources, to analyze the impacts with respect to particular types of traffic, but that it had not undertaken such analysis. AAR further observed that the concept of long-distance movements implicated the issue raised in comments and at the hearing regarding whether reciprocal switching orders must be limited to terminal areas. AAR explained that the standard for identifying a terminal area was well-established and workable, and that the concept of reciprocal switching is inherently associated with operations conducted between two railroads in a terminal area with respect to a shipper located in that terminal area. AAR noted that this was both an important practical limitation and a firm statutory line that distinguishes reciprocal switching from other forms of prescribed service. AAR elaborated that, for that reason, a limitation to switching within a terminal area was a statutorily required condition on any forced switching rule. AAR added that a failure to observe this distinction, especially when coupled with other proposals that have been discussed during the hearing and in comments, poses significant risks of regression to an open routing regime.

AAR highlighted several operational complications and infrastructure limitations that could arise in terminals where limited reciprocal switching may exist today, but which would be strained by expansion of those operations. AAR explained that these operational considerations would need to be evaluated on a location-specific basis, which means that a rule that does not take account of railroad conduct and service levels at specific locations would have undesirable operational effects. AAR and Vice Chairman Schultz discussed how such considerations would or would not be considered under the approach described in the Proposed Rule, and more generally the potential for unintended consequences under certain formulations of a forced switching rule.