

SURFACE TRANSPORTATION BOARD**Ex Parte 711 (Sub-No. 1)**

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Summary of Ex Parte Meeting between Association of American Railroads and**Surface Transportation Board Chairman Martin Oberman****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:

- Martin Oberman, Chairman
- Ellen Erichsen, Chief of Staff
- Laura Wilson, Appellate Attorney, Office of General Counsel
- Carolyn Chachkin, Appellate Attorney, Office of General Counsel
- Stephanie Borges, Administrative Assistant

Summary:

Chairman Oberman opened the discussion with several observations about the status of the proceeding, and the continuing effort by him and other Board Members to explore the appropriate approach to a rule in the proceeding. He expressed appreciation for illuminating colloquies during the hearing regarding the relationship between the present rulemaking and the existing 49 C.F.R. Part 1147 service regulations. In addition, he made clear that he did not view the proposed rulemaking regarding emergency service orders under 49 C.F.R. Part 1146 as an alternative to the rulemaking in EP 711 (Sub No. 1). Finally, he expressed his continuing interest in the nature, scope, and consequences of existing voluntary reciprocal switching activity.

AAR described 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 shared its perspective that rules of the sort at issue in this proceeding should be designed to identify problems where they exist and provide appropriate remedies, which AAR views as the general approach of the existing competitive access regulations and existing service

regulations. AAR explained that this was, in its view, the proper way to allow shippers to obtain relief where warranted, without compromising the interests of other users of the rail network through inappropriate switching orders. AAR contrasted that style of regulation with one that grants a very broad entitlement to switching with only limited guardrails. Chairman Oberman explored the possibility of threshold conditions relating to geography, existing switching operations, or financial measures.

Chairman Oberman noted that he is considering having a set of regulations that would deal appropriately with a spectrum of different situations, ranging from emergencies, to deterioration of service, to situations where a railroad that serves a shipper without effective competitive alternatives has chosen to reduce service to inadequate levels. AAR discussed how each scenario can be addressed, but should be done through regulations that identify the nature of the conduct or failure at issue and seek an appropriate remedy in response.

AAR and Chairman Oberman discussed 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.

With respect to Chairman Oberman's interest in information about the nature, scope, and consequences of existing voluntary reciprocal switching activity, AAR observed that data limitations in the Board's carload waybill sample mean that data set is unsuitable for gleaning that information in the aggregate, and that individual railroads may be able to provide information about their own respective operations.

Chairman Oberman expressed his views on the importance of having an appropriate regulatory and marketplace balance between shippers and railroads. AAR noted that any inquiry of that sort should be sensitive to a factual analysis of what (if anything) has changed over time, the causes of those changes, diversity of interests within the shipper community, and the regulatory responses or remedies that would be appropriately targeted to any such findings.