

SURFACE TRANSPORTATION BOARD**Docket No. EP 711 (Sub. No. 1)**

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Office of Proceedings
May 5, 2022
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Reciprocal Switching**Summary of Ex Parte Meeting Between CN
and Surface Transportation Board Chairman Martin Oberman****April 21, 2022**

CN Attendees: Rob Reilly, Executive Vice-President and Chief Operating Officer; Bernd Beyer, Vice-President and Treasurer; Kathryn Gainey, Deputy General Counsel; David Woodruff, Assistant Vice President & Head of U.S. Public & Government Affairs; Andreas Aepli, Cambridge Systematics; Matthew Warren, Sidley Austin LLP

STB Attendees: Martin Oberman, Chairman; Ellen Erichsen, Chief of Staff; Laura Wilson, Attorney Advisor; Carolyn Chachkin, Attorney Advisor

CN thanked Chairman Oberman for the opportunity to meet. Because of time constraints on the last day of the hearing, CN explained that it wanted to provide Mr. Aepli's modal market share presentation and allow an opportunity for any questions.

Mr. Aepli provided an overview of his analysis using 2019 Transearch data, which showed truck having a larger market share than rail carload for all commodities except coal and metallic ores. Mr. Aepli described his analysis by mileage bands and explained that, if coal is excluded from the analysis, there are no distance ranges where the mode share for rail carload exceeds highway.

CN and Chairman Oberman then discussed the possibility of revisions to the Board's service inadequacy regulations at 49 C.F.R. pt. 1147 and stakeholder engagement on that effort. Chairman Oberman stated that it is helpful for railroads and shippers to work together to find solutions; he strongly encouraged the railroads to engage in those conversations sooner rather than later. Chairman Oberman stated that this proceeding is a high priority for him.

Chairman Oberman discussed the interplay of the Board's regulations at 49 C.F.R. part 1146 (service emergencies), 49 C.F.R. part 1147 (service inadequacies), and 49 C.F.R. part 1144 (prescription of through routes and reciprocal switching). He observed that those rules do not refer to each other and suggested that perhaps the regulations should be modified to clarify when the provisions are applicable based on the nature of the problem. He expressed a preference for workable and

practicable solutions. CN and Chairman Oberman discussed the difference between potential incremental solutions as opposed to broad, sweeping action.

CN and Chairman Oberman discussed the idea he raised at the hearing that the 2016 proposal could be limited to yards where voluntary switching is occurring. CN and Chairman Oberman discussed existing agency case law defining terminal areas. Chairman Oberman asked how many locations and customers are listed in CN's voluntary reciprocal switching tariff. CN explained that its switching tariff is publicly available and lists stations and customers. CN explained that some eligible customers or locations are restricted to certain commodities, originations, or destinations.

CN and Chairman Oberman thanked each other for their time.