

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

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May 11, 2022  
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**Summary of Ex Parte Meeting between Association of American Railroads and****Surface Transportation Board Member Robert Primus****May 4, 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:

- Robert Primus, Member
- Elizabeth McGrath, Attorney Advisor

Summary:

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. AAR observed that parts of the current proposed rule were especially out of step with those principles.

Member Primus and AAR discussed the relevance of reciprocal switching in the context of recent service difficulties that the Board explored in a recent hearing. In particular, they discussed certain operational implications of switching, and circumstances in which switching could or could not provide a shipper relief from service difficulties. Member Primus shared his observations about the current extent of reciprocal switching activity under voluntary agreements.

Member Primus expressed views about the role of the Board in resolving disputes between particular parties while maintaining a holistic view of the national rail network. He emphasized the need to maintain a fluid network and support supply chains upon which our economy relies. AAR expressed its agreement with those as considerations that should guide both general rulemaking and particular decisions.

AAR voiced its concern that a rule adopted in this proceeding should not lead to rate compression that would undermine the differential pricing that has sustained investment in the national rail network. In that regard, AAR noted its concerns about the effect that the current proposed rule would have on both future investment and on current differential pricing, and observed that the two concerns were rooted in the industry's ability to cover the fixed costs of up-front investment and continue to invest in its network over the long term. Relatedly, Member Primus and AAR discussed the topic of future growth in the industry and incentives for investment, both in general terms and with specific reference to the proposed rule currently under consideration in this proceeding.

Member Primus and AAR also discussed the diversity of interests reflected within various stakeholder groups, including both carriers and shippers. AAR observed that shippers did not uniformly support the rulemaking, and encouraged the Board to be mindful of competing interests among shippers, and unintended consequences for some shippers from a rule adopted in this proceeding. Member Primus encouraged AAR to promote communication among stakeholders on the issues in this proceeding, and in issues before the Board more generally.