

**Comments on the STB Proposed Rule: Reciprocal Switching for Inadequate Service**

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Here are my comments on the proposed rule.

**The service standards should be more stringent**

The service standards could be more stringent and reflect the expectations of shippers and the capabilities of railroads. For example, the service reliability standard could be raised to 70% or higher, as the STB suggested, or even higher, as some shippers advocated. The service consistency standard could also be adjusted to account for seasonal variations and different types of commodities. The local service standard could be expanded to include other aspects of local service, such as switching frequency and dwell time.

A possible way to address this issue is to revise the definitions of the service standards in § 1145.2 of the proposed rule to incorporate more specific and rigorous criteria for measuring service performance and quality. For example, the definition of service reliability could be changed to: “Service reliability means the percentage of all customers on an intercity passenger rail train who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time, reported by train and by route. The minimum standard for service reliability is 80 percent for any 2 consecutive calendar quarters, unless the Board determines that a higher or lower standard is appropriate based on the characteristics and expectations of a particular route or market.”

A possible textual change to reflect this revision is: In § 1145.2, revise paragraph (a) to read as follows: (a) Service reliability means the percentage of all customers on an intercity passenger rail train who arrive at their detraining point no later than 15 minutes after their published scheduled arrival time, reported by train and by route. The minimum standard for service reliability is 80 percent for any 2 consecutive calendar quarters, unless the Board determines that a higher or lower standard is appropriate based on the characteristics and expectations of a particular route or market.

**The procedural rules should be simplified and expedited to reduce burden and uncertainty**

The procedural rules should be simplified and expedited to reduce the burden and uncertainty for shippers and railroads. For example, the STB could provide a clear and objective methodology for determining the interchange point, the switching fee, and the duration of the reciprocal switching agreement. The STB could also set a specific timeline for resolving reciprocal switching requests and limit the scope of discovery and evidentiary submissions.

A possible way to address this concern is to add new provisions in § 1145.3 and § 1145.4 of the proposed rule to specify the procedures and criteria for granting reciprocal switching relief. For example, the STB could establish a default interchange point based on the nearest feasible location where both railroads can access each other's tracks, a default switching fee based on the average cost of providing switching service in similar circumstances, and a default duration of four years for any reciprocal switching agreement, subject to renewal or modification upon request by either party. The STB could also require that any reciprocal switching request be filed within 30 days after receiving the service data from the railroad, that any reply or rebuttal be filed within 30 days after receiving the request or reply, respectively, and that any decision by the Board be issued within 90 days after receiving all filings.

A possible starting point for regulatory text to reflect this revision is: In § 1145.3, add paragraphs (c), (d), and (e) to read as follows: (c) Interchange point. Unless otherwise agreed by the parties or determined by the Board based on compelling evidence, the interchange point for reciprocal switching shall be the nearest feasible location where both railroads can access each other's tracks. (d) Switching fee. Unless otherwise agreed by the parties or determined by the Board based on compelling evidence, the switching fee for reciprocal switching shall be based on the average cost of providing switching service in similar circumstances, as reported by railroads to the Board pursuant to § 1247.9 of this chapter. (e) Duration. Unless otherwise agreed by the parties or determined by the Board based on compelling evidence, any reciprocal switching agreement granted by the Board shall have a duration of four years from its effective date, subject to renewal or modification upon request by either party.

In § 1145.4, revise paragraphs (a), (b), and (c) to read as follows: (a) Filing of request. A shipper may file a request for reciprocal switching relief with the Board within 30 days after receiving the service data from the railroad pursuant to § 1145.3(a). The request shall include a copy of the service data, a statement of how the railroad failed to meet one or more of the service standards in § 1145.2, and a description of how reciprocal switching would remedy or mitigate the inadequate service. The request shall also identify the proposed interchange point, switching fee, and duration of the reciprocal switching agreement, and provide any supporting evidence or arguments for such proposals. (b) Filing of reply. The railroad may file a reply to the request for reciprocal switching relief within 30 days after receiving the request. The reply shall include a statement of whether the railroad agrees or disagrees with the request, and provide any supporting evidence or arguments for its position. The reply shall also address the proposed interchange point, switching fee, and duration of the reciprocal switching agreement, and provide any alternative proposals or counteroffers, if applicable. (c) Filing of rebuttal. The shipper may file a rebuttal to the reply within 30 days after receiving the reply. The rebuttal shall include a statement of whether the shipper accepts or rejects any alternative proposals or counteroffers made by the railroad, and provide

any supporting evidence or arguments for its position. The rebuttal shall also address any new issues or evidence raised by the railroad in its reply.

### **The impacts of reciprocal switching on network efficiency should be evaluated**

The potential impacts of reciprocal switching on network efficiency, fluidity, and investment could be carefully evaluated and mitigated. For example, the STB could consider the operational constraints and challenges that railroads face in providing reciprocal switching service, such as congestion, capacity, safety, and coordination issues. The STB could also ensure that railroads are adequately compensated for their switching service and that their revenue adequacy is not jeopardized by reciprocal switching agreements.

A possible way to address this issue is to require the STB to conduct a case-by-case analysis of the benefits and costs of reciprocal switching for each request, taking into account the specific circumstances and characteristics of the affected railroads, shippers, markets, and routes. The STB could also establish a threshold or a range for the switching fee that would provide a reasonable return to the railroads for their switching service and cover their variable and fixed costs, while also providing a competitive alternative to the shippers. The STB could also monitor the impacts of reciprocal switching on network performance and investment over time and adjust the switching fee or terminate the agreement if necessary.

A possible starting point to reflect such revision is: In § 1145.5, add paragraphs (a), (b), and (c) to read as follows: (a) Analysis of benefits and costs. The Board shall grant reciprocal switching relief only if it finds that the benefits of such relief outweigh the costs, based on a case-by-case analysis of the specific circumstances and characteristics of the affected railroads, shippers, markets, and routes. The Board shall consider, among other factors, the impacts of reciprocal switching on network efficiency, fluidity, safety, coordination, service quality, competition, innovation, and investment. (b) Switching fee threshold or range. The Board shall establish a threshold or a range for the switching fee that would provide a reasonable return to the railroads for their switching service and cover their variable and fixed costs, while also providing a competitive alternative to the shippers. The Board shall consider, among other factors, the prevailing rates for similar services in comparable markets, the distance and complexity of the switching operation, the volume and frequency of traffic, the type and value of commodity, and the availability and feasibility of other transportation modes or options. (c) Monitoring and adjustment. The Board shall monitor the impacts of reciprocal switching on network performance and investment over time and adjust the switching fee or terminate the agreement if it finds that such action is necessary to preserve or enhance network efficiency, fluidity, safety, coordination, service quality, competition, innovation, or investment.

## **The Board should consider the unintended consequential burden on non-eligible shippers**

The rule could create unintended consequences for shippers who are not eligible for reciprocal switching relief, but who share the same rail network or interchange point with those who are. For example, the rule could increase the demand for rail service at certain locations, creating bottlenecks and delays for other shippers who rely on the same infrastructure. The rule could also affect the allocation of rail resources, such as locomotives, crews, and cars, among different shippers and markets, potentially reducing the availability and quality of service for some shippers.

The STB should consider the potential spillover effects of reciprocal switching on other shippers who are not parties to the request or agreement. The STB could also solicit comments from such shippers and invite them to participate in the proceeding as intervenors or amici curiae. The STB could also impose conditions or limitations on reciprocal switching relief to minimize or avoid any adverse impacts on other shippers.

A possible language change to reflect this revision is: In § 1145.6, add paragraphs (a) and (b) to read as follows: (a) Consideration of spillover effects. The Board shall consider the potential spillover effects of reciprocal switching on other shippers who are not parties to the request or agreement but who share the same rail network or interchange point with those who are. The Board shall evaluate whether reciprocal switching would create or exacerbate any operational or capacity constraints, bottlenecks, delays, or inefficiencies that would affect the service quality or availability for such shippers. (b) Solicitation of comments and participation. The Board shall solicit comments from other shippers who may be affected by reciprocal switching and invite them to participate in the proceeding as intervenors or amici curiae. The Board shall give due weight to their views and interests in granting or denying reciprocal switching relief.

## **The Board should take steps to minimize environmental injustice from pollution at interchange junctions**

Switching at interchange points creates is additional pollution and may be an environmental hazard for those who live and work nearby, and in particular may be an environmental injustice for certain groups. This is because switching involves more locomotive movements, idling, braking, and accelerating, which can increase the emissions of greenhouse gases, particulate matter, nitrogen oxides, and other pollutants that affect air quality and human health. Moreover, some interchange points may be located in or near low-income or minority communities that already suffer from disproportionate exposure to environmental hazards and lack of access to health care and other resources.

I suggest that the Board take steps to:

Require the implementation of more efficient and cleaner technologies for locomotives, such as hybrid, electric, or hydrogen-powered engines, that can reduce fuel consumption and emissions.

Require the adoption of best practices for switching operations, such as minimizing idling time, optimizing train speed and routing, using remote control devices, and installing automatic stop-start systems, that can improve operational performance and reduce emissions.

Enhance the monitoring and reporting of emissions from switching activities, such as using sensors, meters, or GPS devices, that can provide accurate and timely data for regulatory compliance and environmental management.

And to the extent necessary, engage with the affected communities and stakeholders, such as local governments, environmental groups, health organizations, and residents, that can foster dialogue, collaboration, and trust for addressing the environmental and social impacts of switching.

Thank you for permitting me to provide comments on the proposed rule.

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