

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 711 (Sub-No. 2)

Reciprocal Switching for Inadequate Service

**MOTION OF THE ASSOCIATION OF AMERICAN
RAILROADS TO EXTEND THE COMMENT PERIOD**

Kathryn D. Kirmayer
J. Frederick Miller Jr.
Amber L. McDonald
Association of American Railroads
425 Third Street, SW
Washington D.C. 20024
(202) 639-2506

Benjamin J. Horwich
Aimee Feinberg
Giovanni Saarman Gonzalez
Munger, Tolles & Olson LLP
560 Mission Street
27th Floor
San Francisco, CA 94105-3089
(415) 512-4066
Ben.Horwich@mto.com

Erin J. Cox
Munger, Tolles & Olson LLP
350 South Grand Avenue
50th Floor
Los Angeles, CA 90071-3426
(213) 683-9100

September 23, 2023

Counsel for the Association of American Railroads

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 711 (Sub-No. 2)

Reciprocal Switching for Inadequate Service

**MOTION OF THE ASSOCIATION OF AMERICAN
RAILROADS TO EXTEND THE COMMENT PERIOD**

The Association of American Railroads (“AAR”) respectfully moves the Surface Transportation Board (“Board”) for an extension of the comment period provided in the Board’s Notice of Proposed Rulemaking (“Notice”) issued on September 7, 2023 in Docket No. EP 711 (Sub-No. 2), *Reciprocal Switching for Inadequate Service*. Specifically, AAR requests a 90-day extension, until January 22, 2024, for submitting opening comments. Under that schedule, reply comments would be due on February 20, 2024.*

AAR recognizes and appreciates the Board’s desire to proceed expeditiously with this rulemaking. Nonetheless, the Notice proposes a novel and significant change in an important aspect of freight rail regulation. The proposed regulations are detailed and complex, requiring extensive effort to review and comment appropriately. The Notice expressly invites comment on at least thirty different questions, some with sub-parts. The schedule currently provided in the Notice will not allow interested parties sufficient time to analyze the many important technical and consequential issues under consideration in this proceeding and to prepare meaningful

* In view of the possibility of a government shutdown at the close of the fiscal year on September 30, 2023, AAR respectfully suggests that it would be appropriate for the Board to consider this procedural motion on an expedited timeframe.

comments that will inform the Board. The current schedule likewise will not allow AAR to fully analyze the impact of the Board’s proposal on the rail network and provide meaningful comments on that issue. AAR is proceeding diligently to perform that important empirical analysis, but as explained in the attached Verified Statement, it is data-intensive and cannot be completed by the current deadline for opening comments.

BACKGROUND

The Board issued a Notice of Proposed Rulemaking on reciprocal switching on July 27, 2016. *Reciprocal Switching*, STB Ex Parte 711 (Sub-No. 1) (STB served July 27, 2016) (“2016 NPRM”). The 2016 NPRM grew out of the Ex Parte No. 711 docket, which was initiated by a July 7, 2011 petition for rulemaking by the National Industrial Transportation League (“NITL”). *Petition for Rulemaking of the National Industrial Transportation League, Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, STB Ex Parte 711 (STB served July 7, 2011). The Board received comments on the 2016 NPRM, held many ex parte meetings, and, in March 2022, convened a public hearing on that rulemaking.

Nearly eighteen months after that hearing, the Board, on September 7, 2023, closed EP 711 (Sub-No. 1), opened a separate subdocket, and issued a new Notice of Proposed Rulemaking on reciprocal switching. Notice at 1, 4-6. The Notice proposes a new regulatory approach that would authorize reciprocal switching prescriptions when a carrier’s service for an individual shipment lane fails to satisfy one of three newly proposed metrics over a 12-week period and other criteria are satisfied. *Id.* at 8-9, 23-27. The Notice also invited comment on at least thirty questions concerning the details, scope, and impact of the proposed rule.

AAR’S REQUEST TO EXTEND THE COMMENT PERIOD

AAR respectfully requests a 90-day extension, to January 22, 2024, of the deadline for submitting opening comments. Additional time is needed for several reasons.

First, the Board’s proposal would represent a significant change in the regulation of the freight rail industry. The Board proposes to adopt a new part 1145 that would provide an independent basis for switching, “separate and apart from parts 1144 and 1147.” Notice at 6. That new part 1145 differs substantially from both the regulatory framework proposed in the original NITL petition and from the regulatory framework that the Board proposed in the 2016 NPRM, on both of which interested parties previously commented. Those proceedings involved multiple rounds of comments, some of which were entertained on comment periods as long or longer than the period requested here—a period appropriately calibrated to the gravity and complexity of those proposals.

Second, the proposed rule is highly complex and detailed. For example, each of the new service standards contains multiple different elements, such as distinct performance thresholds and time metrics. *Id.* at 38-41. Each service standard also incorporates a significant number of newly defined terms. *Id.* at 36-38 (“Definitions”). In addition, the Notice proposes new affirmative defenses, new petition procedures, new standards for issuing and terminating switching prescriptions, and new data-gathering and reporting requirements. *Id.* at 41-44. Indeed, those data-gathering and reporting requirements alone would typically be evaluated in a distinct proceeding with its own comment period. *See, e.g.,* Docket No. EP 724 (Sub-No. 4), *United States Rail Service Issues—Performance Data Reporting* (providing multiple rounds of comments and ex parte meetings on data-reporting requirements).

Third, the Board’s Notice solicits comment on at least thirty different questions, some with sub-parts. Many of the Board’s requests for comment implicate broad and consequential legal or policy issues. *See, e.g.*, Notice at 7-8 n.8 (inviting comment “on what other actions, if any, [the Board] should consider with respect to competitive access and, in particular, whether it should further broaden the application of the public interest prong of § 11102”); *id.* at 12 n.15 (asking whether a switching prescription “should include a minimum level of switching service and, if so, whether the Board should establish a separate and specific penalty structure to be imposed on carriers that do not meet that level of service”); *id.* at 16 (inviting stakeholders “to comment more generally on the appropriate success rate for service reliability, including whether the proposed success rates would reflect the public need for adequate rail service and how use of the proposed success rates would affect the rail network”). Others concern highly technical operational or economic matters. *See, e.g., id.* at 16 (seeking comment on the grace period in the service-reliability standard and whether it “should be increased or decreased (e.g., 0 or 48 hours), and—if it should change—what is the appropriate success rate associated with the suggested grace period”); *id.* at 21 (asking “stakeholders and shippers/receivers to provide evidence and comment on the appropriateness of [the 80% ISP standard] and whether it should be higher or lower”); *id.* at 28-29 (inviting feedback on two different methodologies for setting fees if the affected carriers are unable to reach agreement). The current 45-day period is insufficient to allow interested parties to analyze and provide meaningful comment on the Board’s detailed new regulatory proposal and to respond to all of the questions posed by the Board. AAR respectfully submits that a comment period that provides sufficient time to develop and provide meaningful input will reduce the risk that the Board may finalize a complex rule that is legally erroneous or locks in improvident policy choices on an incomplete record.

Fourth, the current comment period is not sufficient for interested parties to empirically analyze the impacts of the Board's proposed rule on the nation's rail network. AAR is working diligently to perform an empirical analysis of the traffic potentially affected by the rule, but it cannot be completed in the time currently allowed. Accompanying this motion is a verified statement of Michael Baranowski and Nathan Zebrowski of FTI Consulting, Inc., who previously submitted verified statements in EP 711 (Sub-No. 1) (and, for Mr. Baranowski, in EP 711), analyzing the traffic potentially affected by prior reciprocal switching proposals. As they explain, an industry-wide analysis of the traffic potentially affected by the Board's new proposed rule is a significant, data-intensive undertaking that is likely to take at least several months to complete. Verified Statement at 3; *see also id.* at 4 (describing steps needed to conduct the assessment). AAR has been working intensively with FTI Consulting and with member railroads since the Board's decision issued, and is exploring all avenues to provide a meaningful analysis of the type of information requested by the Board within the requested extended time frame. *See* Notice at 16 (inviting shippers and receivers "to submit estimates as to what percentage of shippers (or traffic) overall is likely to be affected by the Board's [service-reliability] proposal").

Fifth, AAR's request is consistent with schedules the Board has adopted in other rulemaking proceedings proposing significant changes to the regulatory framework or requesting comment on multiple, complex issues. If granted, AAR's 90-day extension would lead to a total comment period of approximately five and one-half months. In Subdocket 1 of this proceeding, the Board granted an extension request filed by AAR, resulting in a comment period of similar length. Docket No. EP 711 (Sub-No. 1), *Reciprocal Switching*. The comment period on the original NITL proposal in EP 711 was approximately ten months. The Board has allotted

periods roughly similar to the period requested here in other proceedings that have invited comment on numerous questions. *See, e.g.,* Docket No. EP 767, *First-Mile / Last-Mile Service* (total comment period was approximately five and one-half months).

Dated: September 23, 2023

Respectfully Submitted,

/s/ Benjamin J. Horwich

Kathryn D. Kirmayer
J. Frederick Miller Jr.
Amber L. McDonald
Association of American Railroads
425 Third Street, SW
Washington D.C. 20024
(202) 639-2502

Benjamin J. Horwich
Aimee Feinberg
Giovanni Saarman Gonzalez
Munger, Tolles & Olson LLP
560 Mission Street
27th Floor
San Francisco, CA 94105-3089
(415) 512-4066
Ben.Horwich@mto.com

Erin J. Cox
Munger, Tolles & Olson LLP
350 South Grand Avenue
50th Floor
Los Angeles, CA 90071-3426
(213) 683-9100

Counsel for the Association of American Railroads

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 711 (Sub-No. 2)

Reciprocal Switching for Inadequate Service

Verified Statement and

Written Testimony of

Michael R. Baranowski and Nathaniel S. Zebrowski

September 22, 2023

We are Michael R. Baranowski and Nathaniel S. Zebrowski of FTI Consulting. We have previously submitted testimony in Ex Parte 711 (Sub-No. 1) and, for Mr. Baranowski, in Ex Parte 711. Mr. Baranowski is a Senior Managing Director of FTI Consulting, Inc. and leader of the firm's Network Industries Strategies ("NIS") practice. Since 1980, he has been involved in projects analyzing the engineering, operational, and financial aspects of the railroad industry. He has testified before the Surface Transportation Board, the Competition Bureau Canada, state and federal courts, and in arbitrations. Mr. Zebrowski is a Senior Managing Director in FTI's NIS practice. He joined the practice in 2011 and has over a decade of experience analyzing freight railroad traffic patterns, operations, and costs including developing numerous evidentiary submissions to the Surface Transportation Board, federal courts, and arbitration boards. Details of our backgrounds and qualifications are set forth in Exhibits 1 and 2 to this verified statement and written testimony.

We have been asked by counsel for the AAR to undertake a preliminary evaluation of the processes required and estimated time to complete the analyses of United States railroad shipments potentially affected by the newly proposed standards in Docket No. EP 711 (Sub-No. 2), *Reciprocal Switching for Inadequate Service*. The proposed standards are intended to address (1) a rail carrier's failure to meet its original estimated time of arrival (OETA), i.e., to have adequate on-time performance; (2) a deterioration in the time it takes a rail carrier to deliver a shipment (transit time); and (3) a rail carrier's failure to provide adequate local (or "first-mile / last-mile" (FMLM)) service, as measured by the carrier's success in meeting an "industry spot and pull" (ISP) standard. Each standard would provide an independent path for a petitioner to obtain prescription of reciprocal switching under a newly proposed part 1145.

For each of the proposed standards, the Board has proposed a twelve-week measurement period and established performance thresholds. For OETA, the initial threshold requires that at least 60% of shipments of manifest freight a shipper moves on an individual lane arrive within 24 hours of the OETA. Transit time thresholds are triggered if a shipper can demonstrate that the average transit time for shipments on an individual lane increased by either 20% or 25% over the transit time for the same 12-week period during the previous year. The industry spot and pull standard would require a carrier to achieve a success rate of 80%—over a period of 12 consecutive weeks—in performing local deliveries and pick-ups during the planned service window. Assessing the impact of the proposal on the rail network as a whole is time-consuming and extremely data intensive.

As an initial matter, the Board’s proposal addresses traffic originating or terminating in terminal areas, which is a population of traffic that is new and different from the population of traffic potentially affected by the prior proposals under the Board’s consideration. None of FTI’s prior submissions in proceedings under EP-711 have undertaken analysis specifically addressing traffic originating or terminating in terminal areas.* We are also mindful of the analysis necessary to address the core feature of the proposed rule—the service standard thresholds proposed by the Board. Based on our experience, we are aware that there is wide variation across the Class I railroads, both in terms of what data are collected and how those data are maintained. Further, open issues regarding potential limitations related to lane definitions,

* In Ex Parte 711 the Board asked for comments to “[i]dentify the existing terminals and shippers located within the boundaries of those terminals,” among other issues. Notice, *Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, STB Ex Parte No. 711, at 9 (July 25, 2012). The verified statement submitted by Mr. Baranowski and Richard W. Brown concluded that this specific issue “could not be evaluated” based on the waybill data and instead “construct[ed] a list of closed stations” to provide analysis estimating potentially affected traffic. Opening Comments of AAR, *Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, STB Ex Parte No. 711, Verified Statement of Michael R. Baranowski and Richard W. Brown at 5 (filed March 1, 2013); *see id.* at 5–10.

potential disaggregation of data for traffic moving under different rate authority (e.g., common carrier, contract, and exempt traffic), interline shipments, and the scope of shipments potentially affected (i.e., manifest, unit train, contract, etc.), among others, introduce additional complexity.

Accordingly, a project to assess the amount of traffic potentially affected by the newly proposed rules would require the following (under a best-case scenario set of assumptions):

- Collecting traffic tape data for at least 2 years from each of the Class I carriers
- Estimating which of the thousands of customers' facilities generating shipments in these data fall within terminal areas based on available data
- Determining which of the subset of customers' facilities located within terminal areas have "practical physical access" to only one Class I railroad, as defined by the Board
- Identifying the lanes for shipments determined to originate and terminate in defined customer facilities in terminal areas
- Investigating what OETA, transit time, and ISP weekly performance data is available at a lane-specific level for at least 1 year (2 years for transit times); if some data are available, then it would be necessary to ascertain if the methodologies used for collecting those data are consistent across carriers and are aligned with definitions in the proposed rule
- Matching weekly lane-specific performance data against weekly traffic movements for lanes identified above for individual shippers and receivers, and identifying, for each lane, whether there are any applicable 12-week periods where at least one minimum threshold is triggered

Based on the scope of the areas of inquiry and the sheer number of rail shipments that occur annually, it is our preliminary view that the analyses required to estimate the amount of traffic potentially affected by the Board's proposal would require thousands of hours of analytical work and likely take at least several months to complete, though we anticipate that the actual time required will depend on the potential data and other issues that may arise. An extension of the current schedule would therefore be necessary for us to provide AAR with data analysis that

would allow AAR to be responsive to many of the multiple technical questions that the Board has posed about the new proposal.

VERIFICATION

I, Michael R. Baranowski, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this verified statement and written testimony.

Executed on September 22, 2023.



Michael R. Baranowski

VERIFICATION

I, Nathaniel S. Zebrowski, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this verified statement and written testimony.

Executed on September 22, 2023.

A handwritten signature in dark ink, appearing to be 'N. Zebrowski', written over a horizontal line.

Nathaniel S. Zebrowski

Michael Baranowski

Senior Managing Director
Economic Consulting

8251 Greensboro Drive, Suite 1111 – McLean, VA 22102

+1 571 830 1050

mike.baranowski@fticonsulting.com

Education

B.S. in Accounting, Fairfield
University

Supplemental Finance
Studies, Kean College

Mike Baranowski heads FTI's Network Industries Strategies practice and provides strategic, financial, and economic consulting services to the telecommunications and railroad and pipeline transportation industries. He has special expertise in analyzing and developing complex costing and cash flow models, conducting detailed operations analysis, and transportation engineering. Much of his work involves providing oral and written expert testimony before courts, arbitration panels and regulatory bodies.

He is a recognized expert in railroad regulatory economics and has assisted FTI's railroad clients in a broad range of litigation and regulatory engagements involving pricing of services, contract disputes, damage calculations and analyses of the specific effects of pending or proposed changes in policy or regulation.

Some of Mr. Baranowski's representative experience includes:

- Development of strategic litigation analyses for large network industry regulatory rate proceedings based on the theory of Constrained Market Pricing and the Stand-Alone cost test. Theory assumes the existence of a hypothetical, efficient competitor and involves detailed analysis of short and long run operations, expenses, capital expenditures and revenues.
- Analysis of market dynamics effecting pricing and development of a suite of modeling tools to assess the regulatory risk of tariff and contract transportation rates for a mix of commodities and services based on key cost drivers and forecasts.
- Expert testimony related to the determination of damages in a variety of commercial contract disputes in the railroad, telecommunications, pipeline and trucking industries.
- Evaluation of market effects of proposed railroad mergers and identification of merger related efficiencies and quantification of the associated savings.

- Going concern and liquidation value estimates for railroad related assets as the basis for trackage rights and competitive access compensation.
- Develop detailed cost and revenue allocation metrics to assess relative profitability of individual asset groups or segments of complex network industries.

Mr. Baranowski holds a B.S. in Accounting from Fairfield University in Fairfield, Connecticut and has pursued supplemental finance studies at Kean College in Union, New Jersey.

Select Railroad Testimony

Surface Transportation Board

January 7, 2013	Docket No. 42130 SunBelt Chlor Alkali Partnership v. Norfolk Southern Railway Company, Reply Evidence of Norfolk Southern Railway Company
March 1, 2013	Ex Parte No. 711 Petition for Rulemaking to Adopt Revised Competitive Switching Rules, Opening Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Richard W. Brown
April 12, 2013	Docket No. 42136 Intermountain Power Agency v. Union Pacific Railroad Company, Reply Evidence of Union Pacific Railroad Company
April 30, 2013	Ex Parte No. 711 Petition for Rulemaking to Adopt Revised Competitive Switching Rules, Reply Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Richard W. Brown
June 20, 2013	Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Comments of the Association of American Railroads, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
September 5, 2013	Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Reply Comments of the Association of American Railroads, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
July 21, 2014	Docket No. 42121 Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.
September 5, 2014	Ex Parte No. 722 Railroad Revenue Adequacy, Opening Comments of Norfolk Southern Railway Company, Verified Statement of Michael R. Baranowski
November 4, 2014	Ex Parte No. 722 Railroad Revenue Adequacy, Reply Comments of Norfolk Southern Railway Company, Verified Statement of Michael R. Baranowski
September 4, 2015	Docket No. FD 35743 Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(a) - Canadian National Railway Company, Opening Evidence of Illinois Central Railroad Company and Grand Trunk Western Railroad, Joint Verified Statement of Michael Baranowski and Benton Fisher

October 7, 2015	Docket No. 42121 Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., Supplemental and Compliance Evidence of CSX Transportation, Inc.
October 23, 2015	Docket No. FD 33760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Rebuttal Statement, Verified Statement of Michael R. Baranowski
November 20, 2015	Docket No. 42121 Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., Reply to Supplemental and Compliance Evidence
March 7, 2016	Docket No. 42142 Consumers Energy Company v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.
July 18, 2016	Docket No. FD 35842 New England Central Railroad, Inc. -- Trackage Rights Order -- Pan Am Southern LLC, Pan Am Southern Reply Evidence, Verified Statement of Michael R. Baranowski
July 26, 2016	Ex Parte No. 704 (Sub-No. 1) Review of Commodity, Boxcar, and TOFC/COFC Exemptions, Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher
August 26, 2016	Ex Parte No. 704 (Sub-No. 1) Review of Commodity, Boxcar, and TOFC/COFC Exemptions, Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher
October 11, 2016	Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Comment of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher
October 26, 2016	Ex Parte No. 711 (Sub-No. 1) Reciprocal Switching, Opening Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski
November 7, 2016	Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Reply Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher
March 6, 2017	Docket No. 42142 Consumers Energy Company v. CSX Transportation, Inc., Supplemental Reply Evidence of CSX Transportation, Inc.
January 12, 2018	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Petition to Establish Conditions of Use and Compensation, Verified Statement of Michael R. Baranowski
July 16, 2018	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Rebuttal, Verified Statement of Michael R. Baranowski
April 26, 2019	Docket No. 42144 North American Freight Car Association, et al v. Union Pacific Railroad Company, Verified Statement of Michael R. Baranowski

January 26, 2021	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Opening Statement on Compensation, Verified Statement of Michael R. Baranowski
January 29, 2021	Ex Parte No. 704 (Sub-No. 1) Review of Commodity, Boxcar, and TOFC/COFC Exemptions, Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher
April 12, 2021	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Reply Statement on Compensation, Verified Statement of Michael R. Baranowski
May 12, 2021	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Rebuttal Statement on Compensation, Verified Statement of Michael R. Baranowski
June 21, 2021	Docket No. FD 36500, Canadian Pacific Ry. – Control – Kansas City Southern, Canadian Pacific Applicants’ Response to KCS Reply, Verified Statement of Michael R. Baranowski
October 29, 2021	Docket No. FD 36500, Canadian Pacific Ry. – Control – Kansas City Southern, Railroad Control Application, Verified Statement of Michael R. Baranowski
February 14, 2022	Ex Parte No. 711 (Sub-No. 1), Reciprocal Switching, supplemental Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Nathaniel S. Zebrowski
May 27, 2022	Docket No. FD 35743, Application of the National Railroad Passenger Corporation Under 49 U.S.C. 24308(a) – Canadian National Railway Company, Post-Interim Decision Opening Submission of CN, Verified Statement of Michael R. Baranowski
July 12, 2022	Docket No. FD 36500, Canadian Pacific Ry. – Control – Kansas City Southern, Railroad Control Application, Reply Verified Statement of Michael R. Baranowski on behalf of Applicants
August 22, 2022	Docket No. FD 35743, Application of the National Railroad Passenger Corporation Under 49 U.S.C. 24308(a) – Canadian National Railway Company, Post-Interim Decision Rebuttal Submission of CN, Verified Statement of Michael R. Baranowski
February 23, 2023	Ex Parte No. 771, Alternative to URCS, Opening Comments of AAR, Verified Statement of Michael R. Baranowski

U.S. District Court for the Northern District of Texas, Fort Worth Division

November 7, 2017	Civil Action No. 4:16-cv-1061-O, BNSF Railway Company v. Panhandle Northern Railroad LLC, Expert Report of Michael R. Baranowski
November 22, 2017	Civil Action No. 4:16-cv-1061-O, BNSF Railway Company v. Panhandle Northern Railroad LLC, Reply Expert Report of Michael R. Baranowski

December 21, 2017 Civil Action No. 4:16-cv-1061-O, BNSF Railway Company v. Panhandle Northern Railroad LLC, Rebuttal Expert Report of Michael R. Baranowski

Arbitrations and Mediations

April 25, 2013 JAMS REF #1340009009, Union Pacific Railroad vs. Canadian Pacific and Dakota, Minnesota & Eastern Railroad Arbitration, Expert Report of Michael R. Baranowski on behalf of Union Pacific Railroad Company

September 6, 2013 IN JAMS ARBITRATION, Case No. 1220044715, Union Pacific Railroad Company v. BNSF Railway Company, Expert Report of Michael R. Baranowski

October 25, 2013 IN JAMS ARBITRATION, Case No. 1220044715, Union Pacific Railroad Company v. BNSF Railway Company, Expert Reply Report of Michael R. Baranowski

January 1, 2014 IN JAMS ARBITRATION, Case No. 1220044715, Union Pacific Railroad Company v. BNSF Railway Company, BNSF Post-Argument Submission, Affidavit of Michael R. Baranowski

April 14, 2017 American Arbitration Association Case No. 01-15-0004-4830 and 01-15-0004-4931, Arbitration Between FirstEnergy Generation LLC and CSX Transportation, Inc. & BNSF Railway Company, Expert Report of Michael R. Baranowski

November 22, 2017 American Arbitration Association Case No. No. 01-16-0003-6208, CSXT Transportation, Inc. v. JEA and Florida Power & Light Co., Expert Report of Michael R. Baranowski

January 26, 2018 American Arbitration Association Case No. No. 01-16-0005-5615, BNSF Railway Company & Norfolk Southern Railway Company v. FirstEnergy Generation, LLC, Expert Report of Michael R. Baranowski

February 16, 2018 American Arbitration Association Case No. 01-16-0005-5615, BNSF Railway Company & Norfolk Southern Railway Company v. FirstEnergy Generation, LLC, Rebuttal Expert Report of Michael R. Baranowski

February 23, 2018 American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Expert Report of Michael R. Baranowski

April 17, 2018 American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Reply Expert Report of Michael R. Baranowski

June 22, 2018 JAMS REF #1100088262, BNSF Railway Company v. Union Pacific Railroad Company, Expert Report of Michael R. Baranowski

March 25, 2019 American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Expert Report of Michael R. Baranowski

April 26, 2019 American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Reply Expert Report of Michael R. Baranowski

January 18, 2021 American Arbitration Association Case No. 01-18-0001-3283, BNSF Railway Company & Norfolk Southern Railway Company, and Dynegy Midwest Generation, LLC, Expert Report of Michael R. Baranowski on Behalf of BNSF & NS

February 5, 2021 American Arbitration Association Case No. 01-18-0001-3283, BNSF Railway Company & Norfolk Southern Railway Company, and Dynegy Midwest Generation, LLC, Expert Reply Report of Michael R. Baranowski on Behalf of BNSF & NS

January 14, 2022 Arbitration between The Port of Vancouver, USA and BNSF Railway Company, Reply Expert Report of Michael R. Baranowski

Select Pipeline Testimony

Federal Energy Regulatory Commission

November 20, 2019 Docket Nos. OR18-7-002, et al. (Consolidated), Epsilon Trading, et al v. Colonial Pipeline Company, Prepared Answering Testimony of Michael R. Baranowski on behalf of Colonial Pipeline

March 20, 2020 Docket Nos. OR18-7-002, et al. (Consolidated), Epsilon Trading, et al v. Colonial Pipeline Company, Prepared Answering Testimony to Trial Staff of Michael R. Baranowski on behalf of Colonial Pipeline

Nathaniel S. Zebrowski

Senior Managing Director
Economic Consulting

8251 Greensboro Drive, Suite 1111 – McLean, VA 22102
+1 571 830 1050
Nathaniel.zebrowski@fticonsulting.com

Education

B.A. in Economics,
Northwestern University

Graduate Certificate in
Transportation Policy and
Economics, George Mason
University

Nathan Zebrowski is a Senior Managing Director in the Network Industries Strategies group of the Economic Consulting segment, located in McLean, VA. He provides financial and economic consulting services to the transportation and energy industries.

Mr. Zebrowski's work combines economic and statistical training with deep industry expertise and project experience. His work includes freight transportation market analysis; competitive assessments and valuations for transportation assets, services, and systems; contract evaluation, negotiation support, regulatory risk assessment, and damages determinations; litigation and expert witness testimony; rate reasonableness inquiries including application of regulatory tests; M&A related analysis and support; and operational, capital investment, and cost studies.

In Mr. Zebrowski's work evaluating network enterprises, he is informed by an intimate knowledge of the fundamental economics related to long-lived network assets, the unique realities affecting network operations and the highly individualized nature of the regional and commodity markets in which transportation businesses participate. He has special expertise in developing complex computer models assessing traffic flows over railroad networks and conducting detailed studies on costs, operations, and pricing of freight transportation services.

Representative Engagements:

Testimony

March 7, 2016	United States Surface Transportation Board, Docket No. 42142 Consumers Energy Company v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.
October 29, 2021	United States Surface Transportation Board, Docket No. 36500, Canadian Pacific Ry. – Control – Kansas City Southern, Railroad Control Application, Verified Statement of Nathaniel S. Zebrowski and Richard W. Brown
February 14, 2022	United States Surface Transportation Board, Ex Parte No. 711 (Sub-No. 1), Reciprocal Switching, Verified Statement of Nathaniel S. Zebrowski and Michael R. Baraowski
July 12, 2022	United States Surface Transportation Board, Docket No. 36500, Canadian Pacific Ry. – Control – Kansas City Southern, Railroad Control Application, Reply Verified Statement of Nathaniel S. Zebrowski and Richard W. Brown
January 19, 2023	Private Party Arbitration, Kansas City Southern Railway Company vs. Vicksburg Bridge Commission, Expert Report of Nathaniel S. Zebrowski
February 14, 2023	Private Party Arbitration, Kansas City Southern Railway Company vs. Vicksburg Bridge Commission, Supplemental Expert Report of Nathaniel S. Zebrowski
April 15, 2023	Private Party Arbitration, Kansas City Southern Railway Company vs. Vicksburg Bridge Commission, Hearing Testimony of Nathaniel S. Zebrowski

Preparation of Evidence and Testimony Sponsored by Others

Surface Transportation Board

November 30, 2012	Docket No. 42125 E.I. DuPont De Nemours & Company v. Norfolk Southern Railway Company, Reply Evidence of Norfolk Southern Railway Company
December 7, 2012	Docket No. Ex Parte 715, Rate Regulation Reforms, Reply Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski
January 7, 2013	Docket No. 42130 SunBelt Chlor Alkali Partnership v. Norfolk Southern Railway Company, Reply Evidence of Norfolk Southern Railway Company
March 1, 2013	Ex Parte No. 711 Petition for Rulemaking to Adopt Revised Competitive Switching Rules, Opening Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Richard W. Brown
April 12, 2013	Docket No. 42136 Intermountain Power Agency v. Union Pacific Railroad Company, Reply Evidence of Union Pacific Railroad Company

April 30, 2013	Ex Parte No. 711 Petition for Rulemaking to Adopt Revised Competitive Switching Rules, Reply Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Richard W. Brown
June 20, 2013	Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Comments of the Association of American Railroads, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
September 5, 2013	Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Reply Comments of the Association of American Railroads, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
July 21, 2014	Docket No. 42121 Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.
September 5, 2014	Ex Parte No. 722 Railroad Revenue Adequacy, Opening Comments of Norfolk Southern Railway Company, Verified Statement of Michael R. Baranowski
November 4, 2014	Ex Parte No. 722 Railroad Revenue Adequacy, Reply Comments of Norfolk Southern Railway Company, Verified Statement of Michael R. Baranowski
October 7, 2015	Docket No. 42121 Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., Supplemental and Compliance Evidence of CSX Transportation, Inc.
October 23, 2015	Docket No. FD 33760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Rebuttal Statement, Verified Statement of Michael R. Baranowski
November 20, 2015	Docket No. 42121 Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., Reply to Supplemental and Compliance Evidence
July 18, 2016	Docket No. FD 35842 New England Central Railroad, Inc. -- Trackage Rights Order -- Pan Am Southern LLC, Pan Am Southern Reply Evidence, Verified Statement of Michael R. Baranowski
October 11, 2016	Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Comment of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher
October 26, 2016	Ex Parte No. 711 (Sub-No. 1) Reciprocal Switching, Opening Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski
November 7, 2016	Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Reply Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher
March 6, 2017	Docket No. 42142 Consumers Energy Company v. CSX Transportation, Inc., Supplemental Reply Evidence of CSX Transportation, Inc.
January 12, 2018	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Petition

	to Establish Conditions of Use and Compensation, Verified Statement of Michael R. Baranowski
July 16, 2018	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Rebuttal, Verified Statement of Michael R. Baranowski
April 26, 2019	Docket No. 42144 North American Freight Car Association, et al v. Union Pacific Railroad Company, Verified Statement of Michael R. Baranowski
January 26, 2021	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Opening Statement on Compensation, Verified Statement of Michael R. Baranowski
January 29, 2021	Ex Parte No. 704 (Sub-No. 1) Review of Commodity, Boxcar, and TOFC/COFC Exemptions, Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher
April 12, 2021	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Reply Statement on Compensation, Verified Statement of Michael R. Baranowski
May 12, 2021	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Rebuttal Statement on Compensation, Verified Statement of Michael R. Baranowski

Federal Courts

November 7, 2017	Civil Action No. 4:16-cv-1061-O, BNSF Railway Company v. Panhandle Northern Railroad LLC, Expert Report of Michael R. Baranowski
November 22, 2017	Civil Action No. 4:16-cv-1061-O, BNSF Railway Company v. Panhandle Northern Railroad LLC, Reply Expert Report of Michael R. Baranowski
December 21, 2017	Civil Action No. 4:16-cv-1061-O, BNSF Railway Company v. Panhandle Northern Railroad LLC, Rebuttal Expert Report of Michael R. Baranowski

Arbitrations and Mediations

September 6, 2013	IN JAMS ARBITRATION, Case No. 1220044715, Union Pacific Railroad Company v. BNSF Railway Company, Expert Report of Michael R. Baranowski
October 25, 2013	IN JAMS ARBITRATION, Case No. 1220044715, Union Pacific Railroad Company v. BNSF Railway Company, Expert Reply Report of Michael R. Baranowski
January 1, 2014	IN JAMS ARBITRATION, Case No. 1220044715, Union Pacific Railroad Company v. BNSF Railway Company, BNSF Post-Argument Submission, Affidavit of Michael R. Baranowski
April 14, 2017	American Arbitration Association Case No. 01-15-0004-4830 and 01-15-0004-4931, Arbitration Between FirstEnergy Generation LLC and CSX Transportation, Inc. & BNSF Railway Company, Expert Report of Michael R. Baranowski

November 22, 2017	American Arbitration Association Case No. No. 01-16-0003-6208, CSXT Transportation, Inc. v. JEA and Florida Power & Light Co., Expert Report of Michael R. Baranowski
January 26, 2018	American Arbitration Association Case No. No. 01-16-0005-5615, BNSF Railway Company & Norfolk Southern Railway Company v. FirstEnergy Generation, LLC, Expert Report of Michael R. Baranowski
February 16, 2018	American Arbitration Association Case No. 01-16-0005-5615, BNSF Railway Company & Norfolk Southern Railway Company v. FirstEnergy Generation, LLC, Rebuttal Expert Report of Michael R. Baranowski
February 23, 2018	American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Expert Report of Michael R. Baranowski
April 17, 2018	American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Reply Expert Report of Michael R. Baranowski
June 22, 2018	JAMS REF #1100088262, BNSF Railway Company v. Union Pacific Railroad Company, Expert Report of Michael R. Baranowski
March 25, 2019	American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Expert Report of Michael R. Baranowski
April 26, 2019	American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Reply Expert Report of Michael R. Baranowski
January 18, 2021	American Arbitration Association Case No. 01-18-0001-3283, BNSF Railway Company & Norfolk Southern Railway Company, and Dynegy Midwest Generation, LLC, Expert Report of Michael R. Baranowski on Behalf of BNSF & NS
February 5, 2021	American Arbitration Association Case No. 01-18-0001-3283, BNSF Railway Company & Norfolk Southern Railway Company, and Dynegy Midwest Generation, LLC, Expert Reply Report of Michael R. Baranowski on Behalf of BNSF & NS

Federal Energy Regulatory Commission

November 20, 2019	Docket Nos. OR18-7-002, et al. (Consolidated), Epsilon Trading, et al v. Colonial Pipeline Company, Prepared Answering Testimony of Michael R. Baranowski on behalf of Colonial Pipeline
March 20, 2020	Docket Nos. OR18-7-002, et al. (Consolidated), Epsilon Trading, et al v. Colonial Pipeline Company, Prepared Answering Testimony to Trial Staff of Michael R. Baranowski on behalf of Colonial Pipeline