

SURFACE TRANSPORTATION BOARD DECISION
Docket No. EP 711 (Sub-No. 2)
RECIPROCAL SWITCHING FOR INADEQUATE SERVICE
Notice of Proposed Rulemaking (NPRM)

ENTERED
Office of Proceedings
November 7, 2023
Part of
Public Record

Comments by Glass Industry Supply Chain Council

Due November 7, 2023

Comments

COMES NOW, the Glass Industry Supply Chain Council (GISCC) and submits Comments in the above – styled proceeding. In a decision served on September 7, 2023, the Board, among other things, proposed a new set of regulations that would provide for the prescription of reciprocal switching agreements to address inadequate rail service, as determined using objective standards based on a carrier’s original estimated time of arrival, transit time, and first-mile and last-mile service. Reciprocal Switching (NPRM), EP 711 (Sub-No. 1) et al., slip op. at 1 (STB served Sept. 7, 2023). To help implement the proposed new regulations, the Board proposed (1) to require Class I carriers to submit certain data, which would be publicly accessible and generalized; and (2) to adopt a new requirement that, upon written request by a customer, a rail carrier must provide to that customer individualized, machine-readable service data. Id. The Board stated that comments on the proposal are due by October 23, 2023, and replies are due by November 21,

2023 – the Comments and Reply Comments were subsequently modified to November 7 for Comments and December 6.

Background:

GISCC is the national transportation trade association of the U. S. and Canada glass industry, and the Association has been in existence since 1974. Its membership consists of large, medium, and small manufacturers (including major manufacturers of glass bottles and architectural glass) and together the Glass Industry comprises an annual rail spend of billions of dollars. Several of its members develop, mine and ship components that are essential to glass production including such as soda ash, and many sand products. The sand produced by companies is utilized in the manufacture of glass but also in fracking of petroleum wells, golf courses, etc. Many of the members' companies are captive to the railroads (at origin, destination or in some cases both). Competitive rail service is essential to the survival and success of this vital American industry. The current membership of GISCC are companies involved in commitment to identify and solve transportation issues associated with their products. Many of our members are hesitant to publish their names for fear of reprisal by the railroads. They work with the railroads and the Board, but many times are frustrated by the market dominant activities of the rail carriers. Thus, this statement and these Comments

will relate to many of the main issues but not identify the shippers. All the comments have been reviewed by the members of the Council to ensure accuracy.

Soda Ash

Soda ash is an essential and non-substitutable raw material necessary to produce all glass products. It has only one source supply, the mines located in the Green River area of Wyoming. Because of its weight, density, and distance that soda ash must travel (most of the glass plants are located in the eastern half of the country), truck transport is simply not an option. Since there is no intermodal competition in the transport of this vital commodity, there is little possibility of intra modal competition. Thus, reciprocal switching as it presently structured by the Board shows little gain to be made from mandated reciprocal switching. Simply put, the railroads do not have any effective intramodal or intermodal competition. It is for this reason some of our members have reported to the Board stories of extensive delays in the delivery and pick up of rail cars including missed pulling of cars, missed promised deliveries, resultant demurrage, and economic hardship on users of the soda ash leading to increasing costs to consumers. The producers have been told the extensive delays are because the rails prefer to serve freight service to shippers and receivers who have intermodal (truck) alternatives. Our members

simply have absolutely no leverage (for rates or service) without the intramodal competition. It is hoped that the Board will see its way clear to mandate reciprocal switching with sufficient flexibility to allow shippers to explore competitive transportation alternatives.

Sand

One of our members stated “I really don’t have a lot of thoughts on how reciprocal switching will offer any benefit to our business. But I’ll share the thoughts I do have about it.”

Hopefully we can share with the Board something worthwhile for them in their deliberations to make reciprocal switching work for similarly situated shippers. Of course, the consideration of First Mile/Last Mile integrated with reciprocal switching. In general discussion extending the length of rail miles will improve the possibility of access for captive shippers.

From one of our member’s perspective there are three main concerns around reciprocal switching.

1. First, in most cases we are faced with a single problem or at best the shippers are faced with a duopoly on Class One service in a region. “I don’t know what the incentive is for the new carrier to make a competitive offer to unseat the incumbent carrier.” We do know that the Board needs to

encourage access to ensure rail carriers have an economic incentive to compete. We know that 4 Class I railroads control over 90% of all rail business. Such concentration does not lead even with regulatory incentive to motivate the nation's railroads to compete on price or service.

2. "The service bar is too low and measurement time for inadequate service is too long." If we are comparing rail service to truck for instance. If a trucking carrier that was delivering service below 90%, I would be replacing them. "Given the current state of the rail network in North America, 90% of service levels do not seem to happen ever and thus seems impossible. Let's see the bar be set at 80%. Here is the reality - twelve weeks delivery is too long because the railroad can just move resources around to wherever they are up against the twelve-week clock. I'd like to see four to six weeks."
3. "Comparing the service level this year to last year isn't ideal. We know that rail service has been in decline for several years now." So, utilizing 2022-2023 as a standard for service, etc. does not seem appropriate. "I don't know what the ideal timeframe is for comparison, but 2022/2023 I hope is not the standard we have to measure against."

It appears that the railroads are still so focused on PSR that virtually all Glass Industry shippers are not confident. The Board understands the level of service

is never going to be driver to improve performance to benefit of the rail customer. What we have found is that the railroads are not being truthful about their service levels. Some examples from Glass Shippers might provide some clarity.

One of our members shines some light about service.

“CSX has missed 52 of 220 service days or 24% of scheduled days.

1. CSX local crew told us they were servicing a more profitable customer, reducing time for the crew, and even though they are less than 10 miles from us with that customer, the crew does not have enough time to service us.
2. CSX crew told this member they were instructed to select anything, but the crew does not have enough hours to fulfill full service, so their metrics continue to look OK or good.
3. This action by the carrier effectively places the blame on us (the rail shipper) so that we are left looking for causes to lack of service. This is frustrating as what is reported on crew logs and thus up the chain is not truthful.
4. Can Reciprocal Switching serve to eliminate this blame shifting and non-service? If the switching area is expanded large enough, then

captive shippers may be able to benefit. The key is encouraging the market dominant carrier to be faced with competition. It may be that first/last miles focus with reciprocal switching may offer hope, but it will require more distance than just the first or the last mile.

5. "Several times a closed gate was reported on the service manifest, but we do not have any gates, and maintain an open gate status with CSX."
6. "Blocked or obstruction reported, even though if it was a short line railcar, it would have been moved within minutes, but more than likely the real story was the crew did not have hours available to service us."
7. "Local crew and Yard Management have different stories when trying to determine cause of no service." This the Board needs to look at carefully. The service reports are utilized many times to cover service failure and blame is focused too often on the rail shippers.
8. "These service delays are causing bunching due to reduced service days."
9. Why demurrage – when it was the railroads striving for PSR goals.
"This is rail induced demurrage suffered by the rail customers because

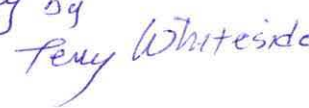
of the bunching of more cars than they requested to be delivered each day or on the schedule the need or can handle at their yard.”

10. Bunching at our location has resulted and caused a switching fee (for not being able to move cars into our location) or demurrage (when using the RR owned cars and they push too many into us and bury their cars behind others).
11. Emergency Service – several times we have had to resort to calls for emergency service to clear out the railroad bunching. Thus, at times forced us to call because of a shortage of cars and 2 times this year, we were faced with a plant shut down if we did not request emergency service (and pay for it) to get cars when they missed days.
2. We have been forced to reroute over a longer more expensive route due to inconsistent rail service. “I have a customer we deliberately chose to use a short line to the NS vs CSX direct even though it cost \$1.50 to \$2.50/ton additional (a couple new plants about \$165 to \$275/railcar) due to the issues with CSX and missed service dates. With a new customer and furnace running 24/7, the concern was if the delays would cause the initial loads to miss the targeted delivery date, they would be out of material.”
3. Demurrage issues. “Increase demurrage billing which we must fight every month, and prove the issue was not our fault, which can be difficult to

explain to their system, and many times just an automated response. Local rep forces us to use ShipCSX, file a case, which many times gets closed without a valid reason, and you must request to reopen the case until resolved.”

It is noted this proceeding deals with Reciprocal Switching for Inadequate Service and will be coupled with the last mile/first mile proceeding after completion of this NPR.

Submitted by:


by


Michael Briley



Terry Whiteside

Of Counsel - Roetzel & Andress
One Seagate, Suite 1700
Toledo, OH 43604

Direct Phone No.: 419.643.9688
Main Phone No.: 419.242.7985
Fax No.: 419.242.0316
Email: Mike Briley@ralaw.com
www.ralaw.com

Roetzel & Andress, A Legal Professional Association

Registered Pracitioner
Treasurer
Glass Producers Supply Chain Council
372 Zion Circle
Billings, MT 59102
Email: Terryofmontana@gmail.com