

**Surface Transportation Board
Ex Parte 711 (Sub-No. 2)—Reciprocal Switching**

Summary of Ex Parte Meeting held on November 3, 2023, between
Institute of Scrap Recycling Industries, Inc.
and Board Member Schultz

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Institute of Scrap Recycling Industries, Inc. (“ISRI”) Attendees:

- Aaron Plitt – AMG Resources (ISRI Member)
- William Johnson – ISRI
- Karyn Booth, Thompson Hine LLP
- Richard Couch, Thompson Hine LLP

STB Attendees:

- Board Member Michelle A. Schultz
- Jessica Caine

Meeting Summary:

The meeting began with introductions, and ISRI thanked the STB Attendees for the opportunity to meet and discuss the Board’s proposed rule.

ISRI supports the Board’s Reciprocal Switching Notice of Proposed Rulemaking (“NPRM”) and said it was a step in the right direction. ISRI also stated that the Board should not abandon the need to address regulatory changes to promote greater rail-to-rail competition more broadly beyond a remedy for inadequate rail service.

Messrs. Plitt and Johnson described the rail service challenges that ISRI members have experienced in recent years. For some, the most pressing issues are missed switches, increased dwell time, reduced car cycle times, and increased demurrage. Some members have flexibility to address a 24 delay but are significantly impacted if rail service issues stretch beyond that period. Mr. Plitt acknowledged that service is slightly better today, but explained that it is likely due to rail traffic being down.

ISRI described the importance of ferrous scrap to steel production and the changing landscape of the steel industry over the past 35 years. Nearly 70% of steel today is made with 100% recycled material. The industry has shifted geographically from the Midwest to the Southeast United States. Rail transportation plays a critical role in moving ferrous scrap to steel mills at increasingly greater distances beyond 150 miles, and because of the heavy weight and volumes of the commodity trucking is not a feasible alternative to rail. This has led to a significant reliance on rail transportation by the ferrous scrap industry and a need for service reliability.

ISRI proposed that the Board partially revoke the ferrous scrap exemption in this proceeding. ISRI stated that the foundation for the NPRM is the public interest standard of the reciprocal

switching statute at 49 U.S.C. § 11102(c), and promotion of the national rail transportation policy (NTP) at 49 U.S.C. § 10101. ISRI stated that the revocation statute at 49 U.S.C. § 10502(d) also specifically authorizes the Board to revoke an exemption in whole or in part when regulation is necessary to advance the NTP. Given the alignment between the revocation statute and the reciprocal switching statute, as well as its members' strong need for adequate rail service as demonstrated in several Board proceedings, including Ex Parte Nos. 704—*Review of Commodity Exemptions*, 575—*Policy Statement on Demurrage & Accessorial Rules and Charges*, 770—*Urgent Issues in Freight Rail Service*, and 767—*First-Mile Last Mile Service*, ISRI argued the Board should partially revoke the ferrous scrap exemption to allow these companies to access the reciprocal switching remedy for inadequate service directly, without having to litigate first a petition for partial revocation. Member Schultz noted that when a shipper of an exempt commodity files for a reciprocal switch prescription, they could ask the Board to revoke the exemption at the time the petition is filed. Member Schultz acknowledged that the exemption revocation issue would first need to be decided before the STB proceeded to merits of the shipper's petition.

ISRI further explained that requiring separate partial revocation petitions each time a company would pursue a reciprocal switching prescription will impose unnecessary costs, burdens and uncertainties that no longer make sense based on the substantial changes to the structure of the freight rail industry since the exemptions were adopted. This effectively will "chill" efforts to use reciprocal switching, despite the serious rail service challenges experienced by ISRI members. Member Schultz inquired whether the fact that ferrous scrap is an exempt commodity may be a factor in determining how a railroad allocates its resources. ISRI acknowledged the possibility that the type of commodity can disincentive the carrier when it allocates its resources especially when the fluidity of the rail network is impacted by congestion or other challenges. A carrier may be less inclined to prioritize exempt traffic.

ISRI next addressed the service metrics in the NPRM. ISRI stated that the OETA threshold of 60% is not equivalent to reliable rail service, and recommended that it should be increased to 70% to incentivize improved rail service that would avoid severe operational impacts to ISRI's members. ISRI stated that certain members have more flexibility when it comes to the reliability of partial deliveries within the 24 hour period, provided that the shortfall cars are not subject to extended delays. Thus, a metric that gradually increased the reliability percentage as delivery delays increased from the OETA would be more beneficial. ISRI next addressed the transit time metric, and proposed that a 15% year-over-year increase would be more appropriate than a 20% threshold to incentive more meaningful service consistency and reduce adverse impacts to supply chains and the network. ISRI expressed concern that a shipper could experience a compounded effect of degraded service year-over-year if a longer term metric is not also established. Finally, ISRI stated there is support for the ISP service metric but proposed increasing the service metric from 80% and adding a local service metric. Finally, ISRI stated there is strong support for the ISP service metric but suggested increasing the service metric from an 80% to 85% threshold, and proposed adding a "no show" metric. Member Schultz appreciated the feedback on the

various service metrics and indicated that the Board will be carefully considering the comments received on the service metrics in the final rule.

ISRI stated there is a need for rail data to be standardized, accurate, and accessible. ISRI proposed that, instead of two to four year reciprocal switching prescriptions, a longer commitment would be needed to justify the alternative carrier's investment of resources. Finally, ISRI proposed expanding the NPRM to Class II and III railroads who could qualify as alternative switching carriers. Currently, the NPRM is limited to Class I railroads.

The meeting concluded with each side thanking the other for participating in the meeting.