

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

Summary of Ex Parte Meeting held on November 2, 2023, between
Institute of Scrap Recycling Industries, Inc.
and Board Member Fuchs

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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 Patrick J. Fuchs
- Stephanie Borges
- Lisa Novins

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. Mr. Plitt stated that the most pressing issues are missed switches, increased dwell time, reduced car cycle times, and increased demurrage. Mr. Plitt continued stating that some members have flexibility to address a 24-hour 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. ISRI continued, stating that nearly 70% of steel today is made with 100% recycled material, and that the industry has shifted geographically from the Midwest to the Southeast United States. ISRI added that 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. ISRI concluded, stating that this has led to a significant reliance on rail transportation by the ferrous scrap industry and a need for service reliability.

ISRI stated that the Board should partially revoke the ferrous scrap exemption with respect to 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 rail transportation policy (RTP) 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 RTP. 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 Docket Nos. EP 704—Review of Commodity Exemptions, EP 575—Policy Statement on Demurrage & Accessorial Rules and Charges, EP 770—Urgent Issues in Freight Rail Service, and EP 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 Fuchs asked whether partial revocation was a logical outgrowth of the NRPM. ISRI responded that the Board expressly addressed exempt traffic in the NPRM, including that some exempt traffic could qualify for reciprocal switching and its intent to revoke exemptions to the extent required. Thus, it is appropriate for stakeholders to address how the Board should evaluate the intersections between exempt traffic and the proposed reciprocal switching rule in their comments filed with the Board. Member Fuchs also noted past revocations by the STB and acknowledged the differences between partial revocation of an exemption and revocation of a class exemption.

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 and scrap steel industries since the exemptions were adopted. ISRI stated that this will effectively “chill” efforts to use reciprocal switching, despite the serious rail service challenges experienced by ISRI members.

ISRI next addressed the service metrics in the NPRM. ISRI stated that the Original Estimated Time of Arrival (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. ISRI explained that because of this, a metric that gradually increased the reliability percentage as delivery delays increased from the OETA would be more beneficial. Member Fuchs noted that a stated intent of the rule is to incentivize Class I railroads to maintain adequate service which would obviate the need to file petitions for reciprocal switching prescriptions, and he stated this would have broader benefits for the rail network.

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. Member Fuchs stated he understood ISRI's point, but he stated that this would work both ways as this type of effect could apply to improved service to shippers. 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. ISRI explained the more severe operational challenges and costs that occur when a railroad misses two consecutive switches, especially for companies who have fewer than five daily switches per week. Member Fuchs stated that he understood ISRI's point and that the circumstances of consecutive missed switches can be especially problematic.

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. Member Fuchs said he understood both points. 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. Member Fuchs remarked that the potential inclusion of shortline carriers raises unique issues that differ from impacts on the Class I carriers.

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