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**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 STB Chairman Oberman

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:

- Chairman Martin J. Oberman
- Jetta Sandin
- Ellen Erichsen

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. Chairman Oberman stated that the foundation for the proposed rule is to advance the public interest. However, it also will promote the competitive aspects of the reciprocal switching statute by allowing access to a second railroad to address inadequate rail service and it provides greater clarity than the proposal in EP 711 (Sub No. 1) based on the establishment of objective service metrics.

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.

Chairman Oberman acknowledged that shippers of exempt commodities also experience rail service challenges. Chairman Oberman asked whether ISRI's request for partial revocation was a natural outgrowth of the proposed rule. ISRI responded that the Board explicitly mentioned exemption revocation in the NPRM and commenters would have a fair opportunity to address exemption revocation during opening and reply comments. Chairman Oberman stated he looked forward to ISRI's comments on this issue.

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. Chairman Oberman acknowledged the potential chilling effect and that exemption revocations would be contested. Chairman Oberman also observed that the NPRM was intended to remove litigation barriers so substantive relief is available as a practical matter, adding that a reciprocal switch prescription had not been ordered since the 1980s.

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. Chairman Oberman encouraged ISRI to provide examples of the impacts of the requested service reliability thresholds to help the Board's understanding. 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. Chairman Oberman commented that the compounding impacts was an interesting consideration and asked ISRI to include this point in its comments. 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. Chairman Oberman inquired about the impacts of consecutive switching misses and what would be a reasonable “no show” metric. He commented that such a metric was worth considering, and asked ISRI to include examples of how a “no show” metric would be calculated in its comments.

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.

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