

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

307527

Summary of Ex Parte Meeting held on November 16, 2023, between
American Forest & Paper Association
and Member Primus

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American Forest & Paper Association (“AF&PA”) Attendees:

- David Ross, Manager, Government Affairs, AF&PA
- Maria Komourdjian, Director of Transportation, Resolute Forest Products
- Mona Moorman, Domtar
- Shanon Wiley, International Paper
- Tyne Brownlow, International Paper
- Julie Alsup, Director, International Paper
- Karyn Booth, Thompson Hine LLP
- Richard Couch, Thompson Hine LLP

STB Attendees:

- Member Robert E. Primus
- Christopher Diamond, Attorney-Advisor

Meeting Summary:

The meeting began with introductions. AF&PA and its members thanked the STB Attendees for the opportunity to meet and discuss the Board’s proposed rule and the issues in this proceeding.

AF&PA acknowledged that the Board’s Reciprocal Switching Notice of Proposed Rulemaking (“NPRM”) was a step in the right direction to address inadequate rail service and that it also supports additional regulatory changes to increase competition in rail service more broadly. AF&PA proposed that the Board partially revoke the exemption for paper and forest products to allow shippers of those commodities access to the reciprocal switch rule. AF&PA added that many of its members ship these exempt commodities under rail transportation contracts.

One AF&PA member stated that its service was episodic and highly variable, whereby it experiences inadequate service, followed by improvements, followed by inadequate service for varying periods of time. Because of this, the member expressed concern with measuring the 60% service reliability metric over consecutive 12-week periods as proposed in the NPRM. Member Primus asked what percentage would be appropriate, and the member responded above 70%. Member Primus asked other members to comment on the service reliability metric. To that point, one member responded that at 60% they are at risk of curbing production and shuttering operations because they rely on rail transportation so heavily.

An AF&PA member added that there is an impression that railroads prioritize non-exempt commodities over exempt commodities because the shipper cannot bring its poor service issues

directly to the STB. Instead, the shipper must first litigate revoking the exemption. Member Primus stated he understood the point.

AF&PA proposed the Board revoke the exemption for paper and forest products in the Final Rule. The NPRM cites the public interest standard of the reciprocal switching statute and promotion of the national rail transportation policy (RTP). The revocation statute authorizes the Board to revoke an exemption when regulation is necessary to advance the RTP. Given the overlap between the two statutes, and the substantial evidence before the STB regarding the inadequate service problems experienced by paper and forest products shippers in Ex Parte 704 and Ex Parte 770, AF&PA argued that the Board should revoke the exemption for paper and forest products in the Final Rule.

AF&PA stated that if the Board could not use service metrics of an exempt commodity then these shippers would be forced to litigate the revocation issue first and wait at least twelve weeks to accumulate service performance data before petitioning the STB for a reciprocal switching prescription. Requiring shippers of exempt commodities to litigate separate partial revocation petitions each time a company sought a reciprocal switching prescription would impose will impose unnecessary costs, burdens, and uncertainties on the shipper. Further, allowing service performance metrics to be measured only after revocation is granted will result in lengthy delays and a disconnect between poor rail performance and access to the reciprocal switching remedy. This effectively will “chill” efforts to use reciprocal switching, despite the serious rail service challenges experienced by AF&PA members. AF&PA added that excluding contract traffic from the service metrics creates a double hurdle for shippers of exempt commodities and stated that a very high percentage of rail traffic moves under rail transportation contracts.

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