



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

307660

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Docket No. EP 711 (Sub No. 2)

RECIPROCAL SWITCHING FOR INADEQUATE SERVICE

**REPLY COMMENTS OF
THE NATIONAL GRAIN AND FEED ASSOCIATION**

The National Grain and Feed Association (“NGFA”) hereby submits these Reply Comments in response to the opening comments filed by other parties in response to the Notice of Proposed Rulemaking (“NPRM”) served in this Sub-docket on September 7, 2023.

In the NGFA’s opening comments it expressed support for the NPRM’s policy goal of creating incentives for Class I railroads to make investments in equipment and crews and to provide service to their customers. The NGFA reiterated that one of the most effective ways for the Surface Transportation Board (“STB” or “Board”) to incentivize rail carriers to take such actions is to facilitate and maximize rail-to-rail competition wherever possible. If effective competition is present, then true market-based behavior can achieve the desired result without Board intervention. For that reason, the NGFA respectfully requested that the Board reconsider its decision in the NPRM to end over 12 years of efforts to develop effective regulations to provide shippers with competitive alternatives via reciprocal switching in EP No. 711 (Sub-No.1), *Reciprocal Switching*, and before it, EP No. 711, *Petition for Rulemaking to Adopt Competitive*

Switching Rules, (“*Competitive Switching*”), which also focused on increasing competition via reciprocal switching in certain situations. The NGFA also expressed its belief that rail service can be improved if the Board finalizes other pending rulemaking proceedings, including Docket No. EP 768, *Petition for Rulemaking to Adopt Rules Governing Private Car Use by Railroads*, and Docket No. EP 762, *Revisions to Regulations for Expedited Relief for Service Emergencies*. Finally, NGFA advocated that the Board should overrule *MidTec Paper Corp. v. Chi & N.W. Transp. Co.* 3 I.C.C. 2d 171 (1986) for all purposes of implementing 49 U.S.C. §11102, which would provide additional opportunities for rail shippers to pursue remedies that involve increasing rail-to-rail competition under particular facts and circumstances.

In response to the opening comments filed by other parties, the NGFA first notes generally that adoption of the numerous fundamental changes to the proposed regulations proposed by the Association of American Railroads (“AAR”) would result in final regulations that would probably not be utilized by rail shippers. This is because the evidentiary burden would be unnecessarily high combined with the already temporary nature of the relief.

The NGFA is generally supportive of the extensive opening comments of The Coalition Associations, with the notable exception that the NGFA disagrees with The Coalition Associations that the Board should explore trackage rights as an additional remedy in a separate regulatory proceeding. Coalition Associations Opening Comments at 63-64 As the NGFA explained in its Opening Comments, trackage rights as an alternative to reciprocal switching can and should be considered, *and should be adopted*, in this proceeding. Given that it has taken 12 years to reach this point in the process of trying to amend the rules governing implementation of 49 U.S.C. §11102, the NGFA believes rail shippers should be circumspect about the Board starting a new proceeding to consider trackage rights remedies under that provision.

The NGFA also generally supports the Comments of the United States Department of Agriculture (“USDA”), in particular USDA’s proposal that under the final rules, “the Board could still consider additional terminal areas through a more case-by-case approach (still under 1145) for shippers who met the poor service metrics standards but fell outside of the pre-defined areas,” and that “the burden of proof for showing why a terminal area should not qualify for a reciprocal switch should fall on the railroads, who have all the information about the costs and operational difficulties associated with the switch.” USDA Comments at 7.

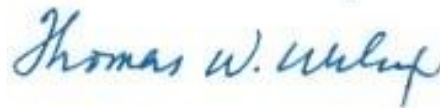
Finally, NGFA offers that the large number of disputed aspects of the proposed regulations and the dozens of requests in the NPRM for comment on their specific components reinforce NGFA’s overall position that measures to increase rail-to-rail competition are a more efficient way to incentivize railroads to improve their service to their customers. Where meaningful competition exists, a railroad is sufficiently incentivized to make investments and fulfill its service commitments to customers in order to prevent losing business to its competitor. The Board’s efforts to amend the rules implementing 49 U.S.C. §11102 and its other governing statutes should always strive to reach this policy goal.

Respectfully submitted,



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