

310958

March 10, 2026

ENTERED
Office of Chief Counsel
March 10, 2026
Part of
Public Record

The Honorable Patrick J. Fuchs
The Honorable Michelle A. Schultz
The Honorable Karen J. Hedlund
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Subject: EP 788, Eliminating Regulatory Barriers to Competition: Review of Part 1144

Dear Board Members,

Lyondell Chemical Company, Equistar Chemicals, LP, LyondellBasell Acetyls, LLC, and LyondellBasell Advanced Polymers Inc. (collectively, "LyondellBasell") submit these comments supporting the Board's notice of proposed rulemaking served January 7, 2026 ("NPRM").

Repealing 49 C.F.R. part 1144 would remove an excessive regulatory limit on the Board's statutory authority to prescribe competitive access. This authority reflects that competition safeguards against inadequate service and unreasonably high rates,¹ and LyondellBasell's experience confirms this. At facilities with reciprocal switching, LyondellBasell leverages it to access more efficient and reliable service and rate competition. These benefits have influenced LyondellBasell's decisions to invest long-term in rail capacity at these facilities.

While LyondellBasell supports repealing part 1144, it urges the Board not to replace existing regulatory barriers with new procedural ones. The Board has long held that considering product and geographic competition places substantial burdens on litigants and the Board. Accordingly, the Board should clearly exclude evidence of product competition and require carriers opposing access to prove effective geographic competition. The Board should also adopt an efficient process for resolving challenges to unreasonably high switch rates that undermine reciprocal switch prescriptions. Further, the Board should clarify that reciprocal switching prescriptions supersede paper barriers that would otherwise preclude the switch.

Part I of these comments describes LyondellBasell and its significant reliance on the American freight rail network. Part II describes LyondellBasell's direct experience with reciprocal switching and how it promotes the benefits Congress intended when it authorized the Board to prescribe competitive access. Part III explains how part 1144 has effectively blocked shipper access to these benefits. Part IV explains why the Board should fully repeal part 1144. And Part V urges

¹ S. Rep. No 96-470, at 41 (1979) ("Competition among railroads, or at least the realistic threat of competition, can serve as an important safeguard against inadequate service or unreasonably high prices."); H.R. Rep. 96-1035, at 66 (1980).

the Board to adopt procedural guidelines ensuring competitive access prescriptions remain accessible.

I. LyondellBasell: Identity and reliance on the American freight rail network.

LyondellBasell operates 19 rail-served manufacturing facilities in Iowa, Illinois, Indiana, Louisiana, Tennessee, Texas, and Virginia. These facilities receive service from all 6 Class I railroads through single-carrier access, multi-carrier access, or reciprocal switching. From these facilities, LyondellBasell originates approximately 90,000 rail shipments per year of polyolefins and liquid chemicals. To support this rail operation, LyondellBasell operates 20,000 private railcars comprising covered hopper cars and tank cars. More than half of LyondellBasell's North American logistics expenses arise from rail logistics.

II. LyondellBasell's experience shows reciprocal switching works.

By expressly authorizing the Board to prescribe reciprocal switching, Congress sought to encourage rail competition as protection against inadequate service and unreasonably high rates.² LyondellBasell's direct experience shows reciprocal switching achieves this important goal.

At eight LyondellBasell facilities across the U.S. Gulf Coast and Midwest, reciprocal switching gives LyondellBasell access to rail competition. This provides numerous benefits:

- **Efficient Routing.** Many serving carrier routings from these facilities run longer than competing carrier routings. In these scenarios, reciprocal switching shortens transits and reduces LyondellBasell's private fleet and infrastructure needs.
- **Improved Private Fleet Utilization.** Some serving carriers restrict weight due to infrastructure limitations, preventing LyondellBasell from using the full 286,000 gross weight capacity of its railcars. Reciprocal switching gives LyondellBasell access to competing routings that maximize car loading. This reduces demands on LyondellBasell's private car fleet, reduces infrastructure demands for LyondellBasell and its customers, and reduces congestion on the rail network.
- **Improved Reliability.** At these facilities, LyondellBasell is not stuck with the serving carrier's reliability issues. If a competitor offers more reliable service, LyondellBasell can select it. This helps LyondellBasell meet customer expectations for on-time deliveries, improve its own efficiency by reducing unnecessary safety buffers of railcars and inventory, and manage around unanticipated network disruptions to keep its goods moving.
- **Competitive Pricing.** In some cases, reciprocal switching at these facilities delivers rate benefits exceeding 30%. This rate competition improves these facilities' global competitiveness.

² *Id.*

Beyond these benefits, reciprocal switching has prompted LyondellBasell to invest in rail infrastructure. LyondellBasell has added more than 2,200 storage-in-transit car spots across four facilities with access to reciprocal switching.³ This increases LyondellBasell's reliance on rail service and facilitates rail traffic growth.

Further, reciprocal switching at these facilities has not disrupted operations.⁴ LyondellBasell typically awards these facilities' rail traffic under multiyear contracts, giving carriers the predictability they need to invest and establish reliable operating plans to execute any reciprocal switching. Also, in many cases, LyondellBasell chooses to keep traffic with the serving carrier, realizing the competitive benefits of reciprocal switching without using the switch.

Nevertheless, LyondellBasell still operates seven facilities that are captive to a single railroad despite having a nearby interchange with a competing carrier. It also ships to captive customer facilities. Traffic involving these facilities faces the same operational inefficiencies, service risks, and elevated rates that reciprocal switching, where available, has helped LyondellBasell mitigate. Repealing part 1144 would remove the regulatory barrier to obtaining competitive access for these facilities.

III. Part 1144 has unduly barred reciprocal switching and other competitive access remedies.

The anticompetitive conduct standard under part 1144 has effectively blocked shipper access to reciprocal switching, through rate, and through route prescriptions. As the Board recognizes, "[i]n the 40 years since its adoption, part 1144 has been rarely invoked, and the agency has never issued a prescription under its framework."⁵

This "dearth of cases"⁶—and lack of successful prescriptions—has led shippers like LyondellBasell to perceive that competitive access remedies Congress affords are practically unavailable. Against this backdrop, few shippers will likely spend resources on a competitive access case, regardless of merit.

Moreover, rail industry changes in the decades since the Interstate Commerce Commission ("ICC") adopted part 1144 make its standard even more unworkable. When the ICC adopted part 1144, dozens of Class I carriers existed. Industry consolidation has reduced that number to 6, with eastern and western duopolies controlling nearly all U.S. rail traffic. Route miles and interchange points have shrunk drastically through extensive rationalization. As the Board observes, "[t]he rail industry has changed significantly since the 1980s, further leading to part 1144's obsolescence. Over more than 40 years, extensive line rationalization and consolidations have impacted the network structure and carrier interactions."⁷ This reduction in competition

³ LyondellBasell Comments 2, *Reciprocal Switching*, EP 711 (Sub-No.1) (filed Feb. 14, 2022).

⁴ *Id.*

⁵ NPRM 7.

⁶ *Id.*

⁷ NPRM 12.

makes separating “anticompetitive conduct” from the background lack of rail competition extraordinarily difficult.

The general lack of rail competition has also allowed railroads to reduce their service and resiliency with effectively no accountability. Layering a regulatory “anticompetitive conduct” standard on the Board’s statutory authority to prescribe competitive access in these circumstances contradicts Congress’s observation when granting this authority that “[c]ompetition can serve as an important safeguard against inadequate service.”⁸

The railroad industry has also leveraged the changed competitive landscape to move from financial distress to financial strength. The Board appropriately observes that “since 2004, Class I carriers’ revenue growth has outpaced inflation amid declining ton-miles.”⁹ While no Class I carrier achieved revenue adequacy 40 years ago, all but one has achieved it in two of the past four years.¹⁰ Accordingly, concerns in the early 1980s about protecting a financially fragile rail industry from competitive access prescriptions no longer warrant part 1144’s regulatory restriction on the Board’s statutory discretion to prescribe competitive access.

Additionally, part 1144’s standing requirements make little sense given competitive access’s purpose of leveraging competition. Part 1144 requires that the shipper seeking a prescription “has used or would use the through route, through rate, or reciprocal switching to meet a significant portion of its current or future railroad transportation needs between the origin and destination.” First, no shipper can demonstrate it “has used” the competitive access it seeks. Second, whether a shipper would use competitive access ignores that competitive access can prompt improved service and rates from the incumbent carrier that would better serve the shipper than those of a competing carrier. Focusing on whether the shipper would actually use the competitive access overlooks that the goal of competitive access is to generate competition.¹¹

IV. LyondellBasell supports full repeal of part 1144.

The Board should repeal part 1144 for all types of competitive access prescriptions, including through routes and through rates. The NPRM specifically asks whether repeal should be limited to reciprocal switching or should extend to all forms of competitive access.¹² The Board observes that “[s]eemingly all of the Board’s reasons given above for repealing part 1144, and replacing it with a case-by-case adjudicatory approach under the governing statutory provisions, apply just as much to through route and through rate prescription as they do to the prescription of reciprocal switching agreements.”¹³ LyondellBasell agrees. The anticompetitive conduct and

⁸ S. Rep. No 96-470, at 41 (1979).

⁹ NPRM 12.

¹⁰ NPRM 12.

¹¹ See S. Rep. 96-470, at 41 (1979) (“Competition among railroads, or at least the realistic threat of competition, can serve as an important safeguard against inadequate service or unreasonably high prices.”) (emphasis added).

¹² NPRM 14.

¹³ *Id.*

standing requirements have proven equally ineffective across all forms of competitive access. The agency has never prescribed a through route or joint rate under part 1144's framework any more than it has prescribed reciprocal switching. LyondellBasell sees no compelling reason to retain part 1144 for through routes and rates while repealing it for reciprocal switching.

Additionally, full repeal aligns the standard that the Board applies for competitive access prescriptions with its statutory discretion. Part 1144 restricts the Board's statutory discretion, imposing an anticompetitive conduct standard and standing requirement that are absent from the statutory text authorizing the Board to prescribe competitive access. Repealing part 1144 does not impose new regulatory requirements on carriers—it restores the Board's ability to exercise the full scope of authority Congress granted under 49 U.S.C. §§ 10705 and 11102(c).

While LyondellBasell supports full repeal of part 1144, repeal is merely a necessary first step. Repeal's impact on competition will depend on precedent arising from case-by-case adjudications. Also, the absence of successful competitive-access cases will continue to chill shippers, who must weigh this uncertainty and the potential high costs of bringing a case when deciding whether to seek competitive access. For these reasons, the Board should not view repeal as increasing competition or as reducing the importance of placing competition-enhancing conditions on future potential railroad mergers. Additionally, case-by-case adjudications makes competitive-access prescriptions a localized remedy for specific competitive harms, not a solution to large-scale loss of competition.

V. The Board must ensure accessible procedures.

LyondellBasell urges the Board to adopt procedural guidelines ensuring that repealing part 1144 translates into accessible relief. LyondellBasell has previously called on the Board to "continue to pursue reforms that increase access to reciprocal switching for shippers without effective competition for their rail traffic,"¹⁴ and repealing part 1144 is an important step in that direction. But to fulfill repeal's promise, the Board must also ensure that procedures for seeking a competitive access prescription are practical and efficient. Three specific issues warrant attention.

First, the Board should provide clear guidance that it will not consider evidence of product competition and that any railroad claiming effective geographic competition must demonstrate it by clear and convincing evidence. The Board has previously found that considering this evidence is not statutorily required and imposes a "substantial burden" on the Board and parties.¹⁵ The NPRM indicates the Board anticipates excluding this evidence but leaves the door open for carriers to present it.¹⁶ LyondellBasell urges the Board to close that door because the mere prospect of facing such evidence would deter meritorious claims.

¹⁴ LyondellBasell comments 3, *Reciprocal Switching for Inadequate Service*, EP 711 (Sub-No.2) (filed Nov. 7, 2023).

¹⁵ NPRM 13.

¹⁶ *Id.*

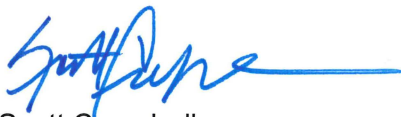
Second, without delaying part 1144's repeal, the Board should establish an efficient process for resolving carrier disputes over reciprocal switch fees. A serving carrier could undermine a reciprocal switching prescription by charging its competitor an excessive switch fee, and no clear process currently exists to challenge such fees. LyondellBasell urges the Board to address this gap.

Third, the Board should make clear that a reciprocal switching prescription overrides any "paper barrier"¹⁷ involving the switch. LyondellBasell has experienced paper barriers that limit reciprocal switching in ways that make little sense. For example, one LyondellBasell facility can originate interstate traffic with two railroads via a reciprocal switch, but the same switch is unavailable for intrastate shipments. The Board should provide guidance addressing the impact of a reciprocal switch prescription on a conflicting paper barrier.

VI. Conclusion

LyondellBasell applauds the Board's decision to repeal part 1144. Removing this excessive and outdated regulatory barrier to competitive access relief is an important first step toward improving access to rail competition. For these reasons, LyondellBasell respectfully urges the Board to fully repeal part 1144 and provide the procedural clarifications in these comments.

Sincerely,



Scott Campbell
Vice President, Global Supply Chain
LyondellBasell

¹⁷ A "paper barrier" is a contractual provision in a sales or lease agreement for a rail line that limits the ability or incentive of the purchaser or lessee carrier to interchange traffic with carriers other than the seller or lessor carrier.