

April 24, 2026

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

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

Lyondell Chemical Company, Equistar Chemicals, LP, LyondellBasell Acetyls, LLC, and LyondellBasell Advanced Polymers Inc. (collectively, "LyondellBasell") submits these reply comments in response to the opening comments filed in *Eliminating Regulatory Barriers to Competition*, EP 788 (STB served Jan. 6, 2026) (the NPRM).

As LyondellBasell explained in its opening comments, repealing 49 C.F.R. part 1144 would lift an excessive regulatory limit on the Board's statutory authority to prescribe competitive access. That authority reflects Congress's judgment that "[c]ompetition among railroads, or at least the realistic threat of competition, can serve as an important safeguard against inadequate service or unreasonably high prices."¹

LyondellBasell's direct experience confirms these benefits. At eight facilities with reciprocal switching, LyondellBasell leverages competition to access more efficient and reliable service and rate competition, and these benefits drove LyondellBasell to invest long-term in rail capacity at these facilities. Yet LyondellBasell still operates seven facilities that are captive to a single railroad despite a nearby interchange with a competing carrier. Repealing Part 1144 would remove the regulatory barrier to competitive access at these facilities.

These reply comments address three arguments railroad commenters raised that, if adopted, would frustrate the Board's stated objective of restoring its full statutory discretion and developing flexible, fact-specific standards through case-by-case adjudication.

The Board should reject calls to exclude all contract traffic from competitive access prescriptions.

CN urges the Board to adopt categorical guidance or adjudicatory principles that would exclude contract traffic from any post-repeal competitive access framework.² The Board should reject this invitation.

First, a categorical exclusion for contract traffic is unnecessary. The purpose of repealing part 1144 is to provide the Board flexibility to act within the limits of its governing statute and provide

¹ H.R. Rep. 96-1035, at 66 (1980); S. Rep. No 96-470, at 41 (1979).

² CN Comments 2-4.

rail customers with access to the competitive access remedies that Congress made available. Further, CN has not explained how the Board's could exercise its discretion to prescribe reciprocal switching under the "necessary for competitive rail service prong" or through routes and through rates in a manner that regulates contract traffic. Merely making competitive access available due to a lack of competition does not regulate contract traffic. But layering on new categorical exclusions for all contract traffic would discourage shippers from seeking prescriptions simply because a contract exists at a facility or for their traffic. This is inconsistent with the purpose of repeal and unnecessary under the case-by-case adjudicatory path that the Board is forging.

Second, categorically excluding contract performance data from competitive access cases is premature and unnecessary. LyondellBasell's contract traffic generally moves alongside its and other shippers' common carrier traffic, and the carrier treats them no differently. Inadequate service on contract traffic often signals an operational issue that affects common carrier traffic or that would persist after the contract expires. For example, railroad staffing shortages, network realignments that funnel traffic into chokepoints, or railroad efficiency measures that reduce resiliency and capacity would affect contract and common carrier traffic alike. The Board should not adopt guidance that categorically bars shippers from using this evidence in individual proceedings, especially since these proceedings allow the Board to weigh the evidence case-by-case and determine whether using it would effectively regulate contract traffic.

Using contract performance data in case-by-case adjudication is unlikely to lead to contract regulation. Any resulting prescription would address only the shipper and carrier involved and would not create a general standard that a party could rely upon. And if using contract-performance data in a particular proceeding risks creating a general contract-performance standard, the Board could exclude the data on a case-specific basis.

Third, a categorical exclusion for contract traffic would recreate the very barrier that repeal of Part 1144 is intended to remove. Many captive shippers, including LyondellBasell, move all or substantially all of their captive traffic under contracts, often under terms that reflect the absence of competitive alternatives rather than genuine bilateral negotiation. Contractual commitments to maintain a minimum service level rarely exist, and carriers often present captive-traffic contracts on a take-it-or-leave-it basis. Excluding contract traffic from the Board's consideration would foreclose competitive access for a significant volume of captive traffic, without weighing the fact-specific circumstances that would prevent this access from impermissibly regulating contract traffic. This would replace the barrier that part 1144's anticompetitive conduct standard has imposed for 40 years.

Fourth, the Board retains authority to prescribe switching prospectively and to address common carrier traffic at mixed facilities. Neither 49 U.S.C. §§ 10705 nor 11102(c) requires a prescription to take immediate effect. A forward-looking prescription that takes effect when the shipper's current contract expires would give the shipper meaningful access to competition without disturbing the existing contractual relationship. The Board should not abandon this flexibility to prescribe competitive access prospectively on a case-by-case basis.

Similarly, the Board should not foreclose competitive access for common carrier traffic at captive facilities. LyondellBasell has captive facilities that originate both contract and common carrier traffic. A broad contract-traffic exclusion would signal to LyondellBasell and other

shippers that common carrier traffic at these mixed-traffic facilities cannot receive competitive access prescriptions, further curtailing the benefits of repealing part 1144.

The Board should not impose any use threshold on competitive access.

Union Pacific has urged the Board to "only prescribe a reciprocal switching agreement if it concludes that the complaining party would use the remedy to meet a significant portion of its transportation needs or move a significant amount of traffic." UP Comments 2. This threshold lacks any statutory basis and conflicts with the purpose of competitive access. Competitive access works by giving shippers an option, and that option promotes adequate service and guards against unreasonably high rates. At LyondellBasell's facilities open to reciprocal switching, this optionality often leads incumbents to provide more competitive service than the competing carrier offers. The Board would undermine these benefits by forcing shippers to use a switch.

Railroad reliance interests do not justify retaining part 1144.

Several railroad commenters in this proceeding argue that they made substantial capital investments relying on Part 1144's anticompetitive conduct standard and that repeal would upset those reliance interests. In LyondellBasell's experience, however, railroads invest significantly even in competitive traffic. For example, Union Pacific is pursuing line construction to access a closed LyondellBasell facility.³ LyondellBasell supports Union Pacific's investment, which shows that railroad investment makes sense regardless of part 1144.

Conclusion

For these reasons and those in LyondellBasell's opening comments, LyondellBasell supports repealing part 1144. The Board should resist calls to condition its repeal on guidance that would replace part 1144 with burdens that chill claims and generic exclusions that overlook the case-by-case approach the Board has outlined. Instead, the Board should restore its full statutory discretion to prescribe competitive access, which is an important step toward improving access to rail competition for captive shippers across the United States.

Sincerely,

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Scott Campbell

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³ See Petition, *Union Pac. R.R.—Construction & Operation Exemption—in Matagorda County, TX*, FD 36854, Sept. 24, 2025.