

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. EP 788

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ELIMINATING REGULATORY BARRIERS TO
COMPETITION: REVIEW OF PART 1144

REPLY COMMENTS OF CSX TRANSPORTATION, INC.

CSX Transportation, Inc. (“CSX”) respectfully submits these reply comments in response to opening comments filed in this proceeding.¹ CSX appreciates the Board’s careful engagement with the competitive access framework. As CSX stated in its opening comments, CSX understands the Board’s view that 49 C.F.R. Part 1144 and the anticompetitive conduct standard are ripe for clarification. CSX’s concern is not with clarification itself, but with the uncertainty and unintended consequences that would result from a complete repeal of Part 1144 without replacement guardrails grounded in the statutory framework Congress enacted and reaffirmed.

As the Board considers whether to proceed with repeal of Part 1144 and case-by-case adjudication, the record confirms two points that can be harmonized with these goals: (1) competitive access remedies should be available when the market is

¹ Notice of Proposed Rulemaking, *Eliminating Regulatory Barriers to Competition: Review of Part 1144*, EP 788 (STB served Jan. 7, 2026) (“NPRM”).

not functioning and regulatory intervention is warranted; but (2) the Board must preserve the deregulatory balance of the Staggers Act and ICC Termination Act (“ICCTA”) so that the competitive access prescriptions that Congress intended to address extraordinary situations are not transformed into routine tools of commercial leverage. A clarified, market-failure-based standard provides a principled path to address both concerns.

I. CSX’s Opening Comments: Clarification Should Preserve the Statutory Balance and Recognize Reliance Interests.

In its opening comments, CSX acknowledged the Board’s concern that Part 1144 needs further clarification regarding the factors that would support a prescription for reciprocal switching or through routes, and CSX recognized that shippers have urged the Board either to clarify or to eliminate the anticompetitive conduct standard. CSX’s comments emphasized that any reform should preserve the statutory balance Congress struck and should not invite an interpretation that a shipper’s sole-served status could, standing alone, form the basis for a competitive access remedy.²

In the railroad industry, most investments are made to win and grow traffic over long time horizons. CSX therefore urged the Board to be mindful of reliance interests and investment incentives built around the existing framework and to reaffirm that statutory limits continue to apply regardless of whether Part 1144

² CSX Opening Comments at 3–4 & Appendix, *Eliminating Regulatory Barriers to Competition: Review of Part 1144*, EP 788 (filed Mar. 10, 2026) (“CSX Opening Comments”).

remains in the Code of Federal Regulations. CSX also explained why eliminating uncertainty matters in practice: a new regulatory regime that makes future volumes and revenue streams less predictable undermines the business case for ongoing capital investment and risks stranding existing assets that have been deployed, operated, and maintained in reliance on the existing framework.

In addition, CSX highlighted that competitive access remedies—whether reciprocal switching, through routes, or through rates—affect network fluidity, predictability, and planning. While an individual shipper may believe it would benefit from a prescription in the short term, the injection of new interchanges would increase car handlings and could degrade service for the broader network.

II. Clarification Is a Constructive Path Forward.

As CSX explained during ex parte meetings in this proceeding, entirely removing the regulations at Part 1144 without providing clarifying guidance could leave a problematic void. CSX therefore suggested that the Board consider modifying rather than repealing Part 1144 by providing guidance on the circumstances that could give rise to a finding of anticompetitive conduct.

Several parties—including BNSF—urged the Board to ground any competitive access regime in the principle that “Board intervention should be limited to instances of market failure,” while ensuring that “in those instances where Board regulation is warranted, the remedies must be accessible, well-

tailored, and effective for all stakeholders.”³ That formulation captures the deregulatory premise of Staggers: regulation is not a substitute for market discipline, but rather a backstop for when market forces are not functioning and a carrier’s market power is being abused. The governing statutory framework reflects Congress’s directive that the Board “promote competition by allowing market forces to govern railroad behavior to the maximum extent possible and to reserve regulatory interference for specific instances when market forces have not adequately protected shippers from abuse of market power.”⁴

CSX agrees that this market-failure framing—reserving regulatory interference for specific instances when market forces have not adequately protected shippers from an abuse of market power—is consistent with the statutory scheme and provides a constructive pathway for clarification. For the Board, maintaining a market-failure lens would serve two practical purposes. First, it would provide a coherent way to explain that competitive access is not available on demand; rather, prescriptions remain an extraordinary remedy justified only by specific, identified problems with the functioning of relevant markets. Second, it would provide criteria that discipline the scope of claims and reduce incentives for parties to press expansive theories in the absence of a defined standard.

III. A Regulatory Void Would Increase Uncertainty and Weaken Investment Incentives.

³ BNSF Opening Comments at 1, *Eliminating Regulatory Barriers to Competition: Review of Part 1144*, EP 788 (filed Mar. 10, 2026) (“BNSF Opening Comments”).

⁴ *Id.* at 2.

CSX continues to be concerned that eliminating Part 1144 without providing clarification would create material uncertainty regarding when and how competitive access remedies will be imposed. Staggers adopted a market-based structure under which rail carriers could earn adequate returns, invest with confidence, and improve service and infrastructure over time. Over the past 40 years, railroads have relied on the current regulatory framework to make significant investments in customer-serving facilities with the expectation of a reasonable return on those investments so long as the railroad did not abuse its market power.

In its opening comments and in previous competitive access proceedings, CSX explained that it works hard to attract new customers to its network and to increase business from existing customers, including through industrial development and targeted capital investments. At the final Ex Parte 711 (Sub-No. 1) hearing, CSX testified about these extensive investments as part of CSX's commitment to growth. Many customers have chosen CSX as their transportation partner, intentionally choosing to site their facility at a CSX sole-served location. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]		
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Rail infrastructure investments depend on reasonable confidence in the durability of future traffic and revenue streams. If the prospect of future volumes becomes less certain, as it would be if the customer could force access to another carrier without a required showing of anticompetitive conduct or market failure, it is harder to justify those investments. Accordingly, where future access conditions are unpredictable, projects that would otherwise advance service and capacity, all to the greater good of the rail network, may not proceed.

This uncertainty is not hypothetical. A regulatory void could invite an initial wave of litigation designed to test the boundaries of an undefined regime, as the Board acknowledged in the NPRM.⁶ That increase in regulatory exposure⁷—independent of ultimate case outcomes—would distort commercial decisions and deter long-term investment.

⁵ CSX is today submitting a motion for protective order along the lines of orders the Board has adopted in prior rulemakings. CSX is designating certain information in these Reply Comments as confidential under the terms of that proposed protective order.

⁶ The STB anticipates this uncertainty by acknowledging that, “at least initially, there may be an increase in the number of matters that shippers bring before the Board.” NPRM at 16.

⁷ As CPKC noted in its opening comments, “While eliminating a regulation is technically deregulatory, the effect of repeal unleashing case-by-case adjudication unguided by standards is decidedly not deregulatory. The actual effect is to expand the Board’s regulatory discretion and invite increased regulatory intervention; such discretion could be applied unevenly in the future.” CPKC Opening Comments at 2, *Eliminating Regulatory Barriers to Competition: Review of Part 1144*, EP 788 (filed March 10, 2026) (“CPKC Opening Comments”).

The effects of repealing Part 1144 would also fall unevenly across the network: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

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Regulatory uncertainty could also be exploited in commercial negotiations, which could imperil CSX and other carriers' ability to differentially price.⁸ This dynamic underscores why the Board's clarified approach should expressly reserve intervention for specific, identified problems and should emphasize that competitive access remedies are not a substitute for Congress's rate reasonableness framework.

IV. Part 1144 Was Consistent with Staggers, and Congress Reaffirmed that Interpretation.

Staggers expanded railroad pricing freedom and endorsed the concept of differential pricing, recognizing that rail traffic inherently does not move under uniform competitive conditions. This endorsement was intentional. The Board acknowledged that carriers must earn adequate returns on traffic with limited alternatives to subsidize investment and improve service across their broader networks. In other words, a foundational principle of Staggers is that a shipper having only one rail option is not, by itself, a problem that needs a regulatory fix.

Deregulation under Staggers has had the desired effect. It has provided benefits to both railroads and customers, which are reflected in higher productivity, increased traffic, and lower rates. This competitive environment has facilitated the long-term recovery and stabilization of the American freight rail industry. It has also facilitated the growth of the intermodal sector, where expansion depended on

⁸ See CPKC Opening Comments at 3 (“[R]epeal could imperil rail carriers’ ability to engage in differential pricing, a cornerstone of deregulation’s success in revitalizing and supporting the continued health of the rail industry. Rather than increase competition, it would increase regulatory interference and distortion in the market.”)

significant capital investment in terminals, equipment, and supporting infrastructure.

Several shipper commenters assert that Part 1144 was never consistent with Staggers.⁹ Those arguments are not new. They mirror arguments presented to Congress during consideration of ICCTA, when stakeholders urged Congress to overturn the agency’s long-standing anticompetitive conduct interpretation of the competitive access provisions.¹⁰ Congress declined to do so.

As reflected in the legislative record summarized in CSX’s opening comments, Congress reenacted the competitive access provisions without change while endorsing “existing standards” and preserving railroads’ maximum freedom to set rates, routes, and divisions so long as those actions are not anticompetitive.¹¹ Indeed, shippers in this proceeding have acknowledged that Congress, despite

⁹ Private Railcar Food and Beverage Association Comments at 8–11, *Eliminating Regulatory Barriers to Competition: Review of Part 1144*, EP 788 (filed Mar. 10, 2026) (suggesting that “Staggers ... intended to introduce competition as an alternative to regulation of rates and service”); Essential Minerals Association Comments at 9–12, *Eliminating Regulatory Barriers to Competition: Review of Part 1144*, EP 788 (filed Mar. 10, 2026) (same); National Stone, Sand & Gravel Association Comments at 4–5, *Eliminating Regulatory Barriers to Competition: Review of Part 1144*, EP 788 (filed Mar. 10, 2026) (“The NPRM follows Congress’s intent, removes barriers to competition, and promotes Staggers’ deregulatory vision.”).

¹⁰ See CSX Opening Comments, Appendix at iii-vi (identifying pre-ICCTA arguments to Congress by certain shipper organizations asserting that the ICC had misinterpreted Staggers, arguments by other shippers and the Department of Transportation that the ICC’s interpretation was correct, and evidence of Congress’s affirmative intent to ratify the anticompetitive conduct standard).

¹¹ S. Rep. No. 104-176, at 9–10 (1995); H.R. Rep. No. 104-311, at 84, 98 (1995), *as reprinted in* 1995 U.S.C.C.A.N. 793, 796.

multiple opportunities and invitations to do so, did not disrupt STB’s long-standing interpretation of Staggers as expressed in Part 1144.¹² That reaffirmation is inconsistent with the claim that the anticompetitive conduct standard was categorically unlawful or somehow incompatible with Staggers.

Congress ratified the anticompetitive conduct limitation because it is consistent with core Staggers principles: the embrace of differential pricing and recognition that rail traffic does not move under uniform competitive conditions. Interpreting competitive access to mean that sole-served status alone entitles a shipper to a prescription would destabilize that balance by compressing revenues and undermining the ability to price to the market. As the ICC argued in *Midtec*, “the language of Section 11103(c) and [] the central philosophy of the Staggers Act” indicate that “regulation should be reserved for situations where it is needed to protect against abuses.” Joint Brief for Respondents Interstate Commerce Commission and the United States of America at 25, *Midtec Paper Corp. v. United States*, No. 87-1032 (D.C. Cir. filed Mar. 14, 1988). The D.C. Circuit adopted a similar logic in its *Midtec* affirmance that the statutory scheme “obviously does not ensure that captive shippers will pay only those rates that would obtain under

¹² “Since passage of the Staggers Act, Congress has enacted only two major pieces of legislation affecting the ICC/STB’s institutional framework; 1) the ICC Termination Act of 1995, which abolished the ICC and created the STB as its successor; and the Surface Transportation Board Reauthorization Act of 2015, which made the STB fully independent and expanded the Board from three to five members. Neither statute modified the Part 1144 competitive-access regime” Comments of American Fuel & Petrochemical Manufacturers at 5–6, *Eliminating Regulatory Barriers to Competition: Review of Part 1144*, EP 788 (filed Mar. 10, 2026) (citations omitted).

‘perfect competition.’” *Midtec Paper Corp. v. United States*, 857 F.2d 1487, 1507 (D.C. Cir. 1988). If the Board could prescribe reciprocal switching “whenever such an order could enhance competition between rail carriers, it could radically restructure the railroad industry. We have not found even the slightest indication that Congress intended the [Board] in this way to conform the industry more closely to a model of perfect competition.” *Id.*

That is why a market-failure clarification offers common ground: it respects the deregulatory baseline of Staggers, while recognizing that targeted intervention may be warranted where market forces have not adequately protected shippers.

V. Considering All Relevant Competitive Forces Is Essential to Any Competitive Access Inquiry.

Any competitive access standard must also be applied in a way that is faithful to real-world competition. As BNSF emphasized, the source of competitive constraints on a rail carrier is “often not obvious from a simple look at only the rail portion of a particular movement,” and the Board should consider “all forms of competition” when evaluating whether market forces have adequately protected shippers from abuse of market power.¹³

That approach is consistent with the Board’s long-standing recognition that direct rail-to-rail alternatives are not the only relevant constraints. Intermodal competition, transloading options, multimodal movements, product substitution, and geographic competition can materially discipline pricing and service in many

¹³ BNSF Opening Comments at 3–4.

markets. If those competitive forces are present and effective, the market is not failing, and regulatory intervention is not warranted. Conversely, where a record demonstrates that these forces are absent or ineffective and that a carrier's market power is being abused, a tailored remedy may be appropriate.

Accordingly, a clarified standard should make explicit that parties may present evidence of all relevant competitive forces and that the Board's inquiry should be grounded in a holistic assessment of competitive dynamics. This will help avoid both under- and over-inclusive results: it will ensure that relief is accessible where market failures exist, while preventing prescriptions that would interfere with functioning markets and degrade service across the network.

VI. Shipper Proposals to Break with Statutory Guidance Should Be Rejected and Illustrate the Value of Guidance.

The opening comments filed by certain shipper interests illustrate that CSX's concerns about repeal being seen as an opportunity to rewrite statutory guidance and undermine reliance interests are not hypothetical. These proposals would in practice convert extraordinary remedies into routine relief and would push the Board toward a form of open access untethered from any demonstrated market failure. The Board should reject these suggestions and should consider guidance reaffirming the statutory guardrails on competitive access remedies.

A. Burden-shifting and presumptions are inconsistent with the statute, particularly for an extraordinary remedy.

For example, USDA proposed a burden-shifting approach under which shippers would provide minimal information and then the burden would shift to the

incumbent railroad to disprove the access request.¹⁴ Similarly, NGFA proposed a rebuttable presumption that the requested switching arrangement is “necessary to provide competitive rail service,” subject to the incumbent’s effort to rebut.¹⁵ These approaches are inconsistent with the statutory standard and invert the Board’s long-standing precedent that the proponent of an order bears the burden of satisfying the statutory standard—particularly where the remedy is extraordinary and can have collateral service impacts.¹⁶ Presumptions that treat access as the default would be inconsistent with that principle and with Staggers’ deregulatory structure.

B. Pricing proposals that are not fully compensatory risk harming railroads’ ability to invest.

Other commenters proposed access pricing approaches designed to ensure access is “not ... set so high as to discourage new entry,” including proposals tied to book value or similar concepts.¹⁷ Any access pricing regime that fails to fully compensate the incumbent railroad—including for lost contribution—would move

¹⁴ USDA Opening Comments at 2, *Eliminating Regulatory Barriers to Competition: Review of Part 1144*, EP 788 (filed Mar. 10, 2026).

¹⁵ Opening Comments of the National Grain and Feed Association at 3–4, *Eliminating Regulatory Barriers to Competition: Review of Part 1144*, EP 788 (filed Mar. 10, 2026).

¹⁶ See 5 U.S.C. § 556(d) (“Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.”); *Union Pac. R.R.—Pet. for Declaratory Order*, FD 35504, slip op. at 4 (STB served Dec. 12, 2011) (“[Petitioner] will bear the burden of proof because it is the party seeking the declaratory order.”).

¹⁷ Comments of the Freight Rail Customer Alliance and National Coal Transportation Association at 3–4, *Eliminating Regulatory Barriers to Competition: Review of Part 1144*, EP 788 (filed Mar. 10, 2026).

the industry away from Staggers’ market-based structure and would undermine the revenue base that supports reinvestment in the network. In this regard, CSX fully supports the views of Union Pacific that “[e]nsuring adequate compensation is essential to sustaining the railroad network’s ability to provide safe, reliable, efficient service to shippers over the long term as well as support additional investments [as] required to support customer growth.”¹⁸

C. Proposals to expand remedies beyond statutory limits underscore the need for guardrails.

Other commenters seek to expand access remedies beyond statutory limits, including proposals to order switching outside terminal areas,¹⁹ to apply prescriptions to exempt traffic,²⁰ or to use this proceeding to resolve unrelated issues such as paper barriers.²¹ The breadth of these proposals reinforces CSX’s overarching point: without clear criteria, the absence of defined standards will invite attempts to expand the statutory standard in ways that are inconsistent with the balance struck in Staggers and ICCTA.

VII. Through Routes and Through Rates Should Not Be Included in Any Repeal.

¹⁸ Comments of Union Pacific Railroad Company at 2, *Eliminating Regulatory Barriers to Competition: Review of Part 1144*, EP 788 (filed Mar. 10, 2026).

¹⁹ Comments of Olin Corporation at 6–7, *Eliminating Regulatory Barriers to Competition: Review of Part 1144*, EP 788 (filed Mar. 10, 2026).

²⁰ Comments of the American Cement Association at 2, 6–7, *Eliminating Regulatory Barriers to Competition: Review of Part 1144*, EP 788 (filed Mar. 10, 2026).

²¹ Comments of Lyondell Chemical Company, et al., at 6. *Eliminating Regulatory Barriers to Competition: Review of Part 1144*, EP 788 (filed Mar. 10, 2026).

The NPRM specifically requested comments on whether the Board should “partially repeal part 1144 as it applies to reciprocal switching but leave the regulation in place as to the prescription of through routes and through rates.”²² For the reasons described in Section III above, CSX wholeheartedly agrees with CPKC that the Board should leave Part 1144 in place as to the prescription of through routes and through rates.²³ At an absolute minimum, CSX urges the Board to develop a more robust record on issues relating to through routes and through rates before taking any regulatory action, as proposed by Norfolk Southern.²⁴

CONCLUSION

CSX appreciates the Board’s careful consideration of these deeply consequential issues. CSX respectfully urges the Board to pursue clarification rather than repeal, and to define criteria—consistent with a market-failure principle—that allow market forces to govern railroad behavior to the maximum

²² NPRM at 14.

²³ See CPKC Opening Comments at 2, 6 (noting that “[r]epealing the standard as to through routes and joint rates could inflict significant operational harm on the rail network;” “[through route] prescriptions could have an even greater impact on the entire network structure [than reciprocal switching]”).

²⁴ Opening Comments of Norfolk Southern Railway Company at 13, *Eliminating Regulatory Barriers to Competition: Review of Part 1144*, EP 788 (filed Mar. 10, 2026) (“Unlike reciprocal switching, the Board has not explored issues relating to through routes and through rates in hearings and extensive public comment. Indeed, in its 2016 NPRM, the Board specifically proposed changes only to reciprocal switching and not through routes, noting that there had not been a “record built” with regard to through routes and through rates. The Board has not explored issues relating to through routes and through rates in the intervening decade either. Against that backdrop, the Board should consider developing a more robust record on issues relating to through routes and through rates before taking any regulatory action.”) (citations omitted).

extent possible while reserving regulatory interference for specific instances when those forces have not adequately protected shippers from abuse of market power.

Respectfully submitted,

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