

SURFACE TRANSPORTATION BOARD

Docket No. EP 711 (Sub-No. 1)

RECIPROCAL SWITCHING

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Summary of Ex Parte Communication between Rosboro Company, LLC
(Rosboro) and Surface Transportation Board (STB) Staff

Held February 7, 2017, 11:00 A.M. to 11:30 A.M. via teleconference

Rosboro Company Attendee: Dennis Williams, General Traffic Manager

STB Attendee: Daniel R. Elliott III, Vice-Chairman; Janie Sheng, Attorney Advisor

Mr. Williams began by thanking Vice-Chairman Elliott for the opportunity to discuss the reciprocal switching proceeding with STB, noting that the point of his comments would be that (1. The use of reciprocal switching as a pro-competitive tool occupied an important place in the formulation of the Staggers Act; (2. The utility intended for Staggers reciprocal switching was effectively eliminated in the mid-1980's by a policy change; (3. In EP 711 (Sub-No. 1), the STB seeks, through policy change, to restore the utility, under just cause, of reciprocal switching as a pro-competitive tool, and (4. Reciprocal switching is a competitive benefit to an industry for which it is available.

Mr. Williams then reviewed his experience in managing freight transportation: My name is Dennis Williams, and I am General Traffic Manager for Rosboro Company, LLC, a manufacturer and worldwide distributor of lumber and glue-laminated beams (all exempt commodities), located in Springfield, Oregon. In my position, which I have held for the past 12 years, I select transportation companies, negotiate rates and service, ensure equipment supply, and arrange all outbound transportation of our finished products via all modes from our plant sites to our customers. My career in freight transportation management spans 48 years, and I remain fervently interested and active in that discipline with the transportation industry. I support a strong freight railroad system as a component of the most cost effective freight transportation system in the world. I deal with freight railroads every day as a captive shipper, and I am satisfied that present regulations are sufficient to protect the interests of both railroads and their customers. In this proceeding, the STB, through a policy revision, proposes to restore and slightly enhance a competitive provision of the Staggers Rail Act in 49USC 11202(c) that was virtually eliminated early in the Staggers era; it is a comprehensive and well-reasoned decision designed to restore this tool.

Mr. Williams then reviewed his experience in regulatory matters relating to Staggers Act principles:

My career began during the period when freight railroads were heavily regulated in a system designed to insulate railroads and their customers from the effects of competition. It was a system that prevented either railroads or their customers from gaining advantage via freight transportation over their respective competitors. This regulatory system became so contrary to market needs that it obstructed transportation of goods and nearly destroyed the nation's railroads. As an employee of a large company that was both a supplier to and a customer of the nation's railroads, and a member of the National Industrial Traffic League, I was among many who closely followed and commented as the legislation that came to be known as the Staggers Rail Act was formulated, negotiated, and passed. In July, 2002, I testified, by invitation from Senator John Breaux, before the Surface Transportation subcommittee of the U.S. Senate's Committee on Commerce, Science, and Transportation to review Staggers on the adequacy of competition as replacement for unduly burdensome regulation. My testimony focused on two key factors: (1. competition among railroads had diminished since the enactment of Staggers, but not to the extent that new regulations were required to protect the shipping public, and (2. I was deeply concerned that the nation's economic growth would result in demand for transportation service that would exceed capacity of the transportation system, particularly the freight railroads. Nine years later, I participated on behalf of Rosboro, my current employer, in Ex Parte No. 705 Competition in the Railroad Industry, filing comments in support of the beneficial effect of Staggers Act principles upon the contemporary freight environment.

Mr. Williams commented on EP 711 (Sub-No. 1) in the context of his experience: The instant proceeding is the logical result of changes that have occurred in rail freight transportation and a succession of regulatory proposals dating back into the 1980's that were advanced by various shipper groups before the Congress which, in the guise of pro-competitive legislation, would, in practice, have injected new regulations in an effort to create advantage for their member companies. EP 705 put the arguments on the table and allowed all parties, including the STB, to examine them in a comprehensive and open way that had not been done before this proceeding. The current proceeding reinstates, by means of a policy change, a pro-competitive provision of Staggers, the authority of the regulatory body to utilize reciprocal switching as a means of enhancing competition, that was virtually nullified in the mid-1980's by the ICC policy regarding reciprocal switching adopted in the Intramodal Rail Competition proceeding and implemented in the Midtec Paper Case.

Mr. Williams then commented on the benefit of reciprocal switching and his experience in obtaining this benefit:

The ability for a shipper or receiver of freight by rail to access more than one Class 1 railroad by virtue of reciprocal switching, where the industry is an open industry, is a competitive advantage, providing useful flexibility to the industry in terms of promoting choice in transportation service in the link between producer and consumer. Reciprocal switching agreements with which I am familiar are generally the result of negotiated agreements made between the railroad and its prospective customer at the time an

industry selected a site for constructing a manufacturing or receiving facility. I have assisted several customers of my company in their site selection efforts for new or different facilities, and in all circumstances recommended their either selecting a site that was open to reciprocal switching or negotiating provisions with the serving railroad that a new site would be open to reciprocal switching. I have also negotiated contractual agreements with our serving railroad that provided specific and limited access to reciprocal switching to a competitive railroad, but these agreements ultimately failed as the non-serving railroad experienced difficulty in providing equipment for loading. I could find no discussion of the linehaul railroad's right and obligation to provide empty equipment in the STB decision, and I wish to emphasize the importance of this factor to reciprocal switching.

Mr. Williams then explained options that were diminishing in the absence of reciprocal switching:

In the period following the Midtec case, shippers and receivers still had the option of moving freight via railroads with whom they did not have a direct connection and were not open to reciprocal switching by paying a linehaul charge to their serving railroad. Early in this period, cross-town linehaul charges were substantially less than they became as railroads steadily increased them, in effect building increasingly expensive economic fences around their properties.

Mr. Williams expressed his concern regarding the contemporary nature of intra-modal competition:

Reciprocal switching assumes that railroads are willing to compete. In EP 705, shippers stated that competition among railroads has become weak, in part due to the lesser number of railroads from mergers and acquisitions, and railroads answered with the statement that competition is stronger than it was in prior years. My perspective is that the railroad competitors are stronger than they have ever been, but competition itself is not. If anything, I have seen a tendency for a railroad to avoid direct confrontation with a strong competitor.

I continue to favor allowing competitive markets to set prices and service. The provisions of 49USC include disciplines and freedoms on both transportation providers and purchasers of transportation service.

Mr. Williams expressed his belief, based upon his familiarity with the statutes, that the EP 711 Sub-No.1 proceeding would not apply to the commodities his company manufactures and ships.

Vice-Chairman Elliott replied that exempt commodities could be removed from an exempt status on an individual basis by seeking revocation on a case by case basis. He also noted that there is presently an active proceeding on commodity exemptions before the Surface Transportation Board.