

SURFACE TRANSPORTATION BOARD

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

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Summary of Ex Parte Meeting between the American Chemistry Council (ACC) and Surface
Transportation Board (STB) Commissioner Deb Miller

March 16, 2017, 2:00 PM – 2:30 PM

ACC Participants: Cal Dooley, President and CEO; Jeff Sloan, Senior Director; Mike Meenan, Senior
Director

STB Participants: Commissioner Deb Miller; Brian O'Boyle, Attorney Advisor

ACC expressed appreciation for the Board holding *ex parte* meetings and the opportunity to discuss the competitive switching proposal directly with Board members.

Cal Dooley highlighted that the U.S. chemical industry is experiencing tremendous growth, with over 260 new manufacturing projects announced totaling more than \$180 billion of new capital investment. Data from the Census Bureau indicates that investments in chemical manufacturing represented nearly 50% of the total construction spending on manufacturing projects in 2016. This growth will drive further need for efficient and competitive rail service.

ACC reiterated its strong support for Board action to revise its current rules for reciprocal switching. Shippers need a workable path to obtain switching, which provides greater choice and transparency for shippers negotiating for rail services. ACC emphasized that competitive switching is not rate regulation. It does not prescribe or guarantee a shipper a specific rate. Instead, it allows the competitive market to function. Congress specifically established reciprocal switching provisions separately from its rate review remedies, and STB's proposal is entirely consistent with the Board's statutory authority.

Commissioner Miller asked for ACC's response to railroad arguments that the Board's proposal constitutes "forced access," requiring a railroad to allow competitors to utilize its privately-owned infrastructure. ACC responded that reciprocal switching is very different than requiring a railroad to allow a competing carrier to operate on its tracks to serve a shipper facility. The Board's proposed case-by-case approach minimizes impacts on railroads and directly follows the statutory authority granted in the Staggers Rail Act.

ACC expressed its view that the Board's proposal for reciprocal switching is consistent with the Administration's regulatory reform priorities. It potentially reduces the amount of rail traffic subject to STB oversight. The need to ensure reasonable rates would shrink to just the short distance from a facility

to an interchange, rather than the entire long-distance move. Competitive rail service will also help promote growth and jobs in a broad range of manufacturing, agriculture and energy producing industries. ACC also noted that the Board's proposal would not constitute a new regulation, but would instead be considered updating of an existing, outdated regulation.

ACC referenced the Verified Statements that were included with the reply comments submitted by the Shipper Coalition for Railroad Competition. These statements include extensive analysis of the economic and operational impacts of competitive switching on the rail network. ACC also indicated its belief that the experience of inter-switching in Canada indicates that the Board's proposal is likely to result in a relatively modest number of cars being switched to a competing carrier.