

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

RECIPROCAL SWITCHING

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

**JOINT REPLY COMMENTS OF
WESTERN COAL TRAFFIC LEAGUE
AND
MINNESOTA POWER**

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The Western Coal Traffic League (“WCTL”) and Minnesota Power (“MP”) (collectively “WCTL/MP”) submit these Joint Reply Comments in response to the Surface Transportation Board’s (“STB” or “Board”) Notice of Proposed Rulemaking (“NPR”) served in this proceeding on July 27, 2016.

SUMMARY

The Board’s NPR garnered comments from over 40 interested parties and coalitions, including WCTL/MP. The message from the shipping community is clear: the Board should expand competition among the nation’s railroads by restoring its long dormant power to order reciprocal switching, and the NPR is a worthy step forward – especially the Board’s decision to reverse its competition-throttling, anticompetitive

conduct standard set forth in its reciprocal switching rules¹ and interpreted in *Midtec*.² However, WCTL/MP and many other shippers also expressed concerns, as described below, that the NPR may fall short of its stated goals (*i.e.*, expanding reciprocal switching)³ if the Board does not make certain modifications to any final rules, including the market dominance and public interest switching standards. Indeed, the Board must assure that its new rules do not establish new barriers precluding shippers from obtaining meaningful access to reciprocal switching. For example, the Board should not implement: a market dominance test that is too complicated and costly; a geographic scope of reciprocal switching that is too limited; switching fees that are too high to promote competition; or a procedural process that is so long and costly that the shipper has no incentive to seek relief from the Board.

The Railroads⁴ have, unsurprisingly, attacked the Board's authority to implement its proposed rules; suggested that the NPR is not reasoned rulemaking; sought additional protection by limiting the scope of reciprocal switching to terminal areas; and argued for compensation schemes that ensure that even if reciprocal switching

¹ *Intramodal Rail Competition*, 1 I.C.C.2d 822 (1985), *aff'd sub nom. Balt. Gas & Elec. v. United States*, 817 F.2d 108 (D.C. Cir. 1987).

² *Midtec Paper Corp. v. Chicago & North Western Transp. Co.*, 3 I.C.C.2d 171 (1986).

³ NPR at 16-17.

⁴ Comments were filed by the Association of American Railroads ("AAR"); Norfolk Southern Railway Company ("NS"); CSX Transportation, Inc. ("CSXT"); Union Pacific Railroad Company ("UP"); BNSF Railway Company ("BNSF"); and Kansas City Southern Railway Company ("KCS") (collectively "Railroads").

were available, it would not be economically competitive with a shipper's existing service.

After five years of considering revisions to its reciprocal switching rules, the Board is undoubtedly well aware of the competing arguments from the shippers and the Railroads, and the Board has clearly explained its statutory authority to act.

WCTL/MP, therefore, urge the Board to reject summarily any suggestion that it lacks the authority to act, and, instead, focus its attention on the critical modifications to the NPR proposed by WCTL/MP and other shippers that will serve to restore reciprocal switching as a competitive option for the shipping public.

BACKGROUND

I. WCTL/MP's Opening Comments

WCTL/MP generally supported the Board's proposals to change its current reciprocal switching rules, including the Board's proposal to eliminate the requirement that shippers demonstrate the incumbent carrier has engaged in anticompetitive conduct as a prerequisite to obtaining reciprocal switching relief.⁵

WCTL/MP also urged the Board to clarify or expand the scope of the reciprocal switching relief contemplated in the Board's notice:

- **Covered Interchanges.** WCTL/MP requested that the Board include interchanges that did not presently exist, but could become viable if infrastructure investments, such as new side-tracks, were made by the involved carriers and/or shippers.⁶

⁵ WCTL/MP Joint Comments at 2, 6-10.

⁶ *Id.* at 13-15.

- **Reasonable Distance.** WCTL/MP requested that reciprocal switching be presumed reasonable if the involved distance between the interchange point and the shipper's facility was 10% or less of the origin-to-destination route mileage.⁷

- **Competitive Switching.** WCTL/MP requested that the Board not apply its market dominance rules when making a determination of whether a shipper qualified for competitive reciprocal switching relief; but, instead, to apply a simpler test that focused on whether the shipper was sole-served; the commodity involved; and the incumbent carrier's market share over a defined time period.⁸

- **Public Interest Switching.** WCTL/MP requested the Board affirm that public interest switching is available to electric utilities that suffered service disruptions in prior years.⁹

- **Compensation.** Governing law permits carriers to set the compensation for STB-prescribed reciprocal switching, subject to the Board's setting the switching fee if the carriers cannot reach agreement on the fee amount.¹⁰ WCTL/MP told the Board that reciprocal switching would be effective only if the involved carriers, and the Board, set pro-competitive switching fees.¹¹

II. Other Shippers' Opening Comments

Numerous shippers/shipper organizations filed opening comments. These shippers included chemical shippers (*e.g.*, National Industrial Transportation League,

⁷ *Id.* at 15-17.

⁸ *Id.* at 17-21.

⁹ *Id.* at 21-22.

¹⁰ 49 U.S.C. § 11102(c).

¹¹ WCTL/MP Joint Comments at 23.

American Chemistry Council, *et al.* (collectively “NITL”)); agricultural commodity shippers (*e.g.*, Alliance for Rail Competition *et al.* (“ARC”)); individual coal shippers (*e.g.*, Northern Indiana Public Service Company (“NIPSCO”), Sandy Creek Energy Associates (“Sandy Creek”)); and shippers of numerous other commodities.

The other shippers’ opening comments generally tracked those submitted by WCTL/MP – *i.e.*, they generally supported the Board’s proposals, but also sought changes along the same lines as those submitted by WCTL/MP (*i.e.*, to expand/clarify the scope of permissible reciprocal switching) including:

- **Covered Interchanges.** Most shippers requested that the Board include interchanges that did not presently exist, but could become viable by investments made by the involved carriers and/or shippers.¹²
- **Reasonable Distance.** Most shippers asked the Board to define reasonable distances in a commercially reasonable manner. For example, NITL advocated that a reasonable distance include the distance for a local switch, which it estimated as typically involving distances of up to 100 miles from a shipper’s facility.¹³ NIPSCO agreed with WCTL/MP that a reasonable interchange distance was 10% or less of the involved origin-to-destination route miles.¹⁴
- **Competitive Switching.** Many other shippers (*e.g.*, ARC and Sandy Creek) joined WCTL/MP in asking the Board to apply simpler captivity tests.¹⁵

¹² NITL Comments at 40-42; ARC Comments at 9-10; NIPSCO Comments at 6.

¹³ NITL Comments at 36-40 and Exhibit 2 (Crowley/Fapp V.S.) at 31-32.

¹⁴ NIPSCO Comments at 2-5.

¹⁵ ARC Comments at 10-12; Sandy Creek Comments at 10-11.

- **Public Interest Switching.** Most shippers asked the Board for additional guidance on what evidence they needed to present to prove a case for public interest switching.¹⁶

- **Compensation.** NITL asked the Board to adopt a methodology to set reciprocal switching fees based on a modified version of the “SSW Compensation Methodology.”¹⁷ The SSW Compensation Methodology is a cost-based formula the STB has used to set trackage rights fees (*i.e.*, fees that a carrier pays to move its trains over another carrier’s track). Some shippers also claimed that the law allowed them to challenge the levels carrier-set reciprocal switching fees.¹⁸

III. Class I Railroads’ Opening Comments

The Railroads oppose the Board’s new reciprocal switching proposals.

Their principal arguments include:

- **Scope of Reciprocal Switching.** The Railroads argue that the Board’s power to order reciprocal switching is limited to switching in terminal areas.¹⁹

- **Anticompetitive Conduct Test.** The Railroads argue that the Board has not legally justified its proposed elimination of the anticompetitive conduct test.²⁰

- **Compensation.** The Railroads argue that the Board should set reciprocal switching fees to allow carriers to recover lost “opportunity costs.”²¹

¹⁶ See, *e.g.*, Sandy Creek Comments at 8.

¹⁷ NITL Comments at 50-52.

¹⁸ NITL Comments at 52-53; NIPSCO Comments at 6-7.

¹⁹ AAR Comments at 45-46; NS Comments at 36-39; CSXT Comments at 77-81; UP Comments at 54-56; KCS Comments at 35-40.

²⁰ AAR Comments at 20-29; NS Comments at 12-22; CSXT Comments at 20-30; UP Comments at 18-36; KCS Comments 4-16.

²¹ AAR Comments at 46-49; NS Comments at 64-69; CSXT Comments at 85-96; UP Comments at 51-54.

IV. Other Commenters

Rail labor unions generally support the positions taken by the Class I railroads in this proceeding.²² Shortline railroads generally support the Board's proposal to exempt Class II and Class III carriers from the Board's proposed new reciprocal switching rules.²³ The United States Department of Agriculture ("USDA") filed comments that generally support the positions taken by rail shippers.²⁴ The United States Department of Transportation ("USDOT") filed comments stating that it takes no opening position on the Board's proposals and that it will review the comments filed by other parties.²⁵

JOINT REPLY COMMENTS

WCTL/MP's Joint Reply Comments respond to arguments made by the Railroads that are of particular concern to unit train coal shippers. Specifically, WCTL/MP demonstrate that: (i) the Board's authority to order reciprocal switching relief is not limited to switching within terminal areas; (ii) the Board has properly explained its decision to eliminate the anticompetitive conduct standard; and (iii) the Board should adopt procompetitive reciprocal switching compensation standards.

²² See, e.g., Comments of the Brotherhood of Maintenance of Way Employees Division/IBT, *et al.* at 4-6.

²³ American Short Line and Regional Railroad Association Comments at 3, 8-12.

²⁴ USDA Comments at 4-9.

²⁵ USDOT Comments at 3-4.

I. The Board’s Authority to Order Reciprocal Switching Is Not Limited to Switching in Terminal Areas, as the Railroads Contend

The Railroads contend that the Board’s authority to order reciprocal switching is strictly limited to terminal areas. The Railroads are incorrect. The plain language of the statute, its legislative history, and the applicable case law all support the Board’s authority to order switching within a defined geographic area and not simply terminals.

A. The Railroads’ Argument Finds no Support in the Plain Language of 49 U.S.C. § 11102

The Railroads argue that 49 U.S.C. § 11102 limits the Board’s authority to order reciprocal switching to switching within terminal areas.²⁶ Their argument proceeds as follows:

- 49 U.S.C. § 11102(a) provides that the Board may prescribe terminal trackage rights within terminals and “for a reasonable distance outside a terminal.” *Id.*
- 49 U.S.C. § 11102(c) provides that the Board “may require carriers to enter into reciprocal switching agreements” (*id.*) but says nothing about providing reciprocal switching outside a terminal area.
- Therefore, the “plain meaning” of 49 U.S.C. §11102 is that STB-ordered reciprocal switching is limited to terminal areas, and does not extend to reasonable distances outside of terminal areas.

²⁶ AAR Comments at 45-46; NS Comments at 36-39; CSXT Comments at 77-81; UP Comments at 54-56; KCS Comments at 35-40.

The Railroads' argument is wrong. 49 U.S.C. § 11102(a) provides that the STB has the authority to order carriers to enter into to trackage rights agreements within "terminal[]s" and "for a reasonable distance outside of a "terminal:"

(a) The Board may require terminal facilities, including main-line tracks for a reasonable distance outside a terminal . . . to be used by another carrier if the Board finds the use to be practicable and in the public interest

Id.

However, Congress also drafted 49 U.S.C. § 11102(c) – the provision that authorizes the STB to order carriers to enter into reciprocal switching agreements. 49 U.S.C. § 11102(c) does not refer to "terminals," but instead grants the Board broad authority to order carriers to enter into "reciprocal switching agreements," if the Board determines such agreements to be in the "public interest" or "necessary to provide competitive rail service:"

(c)(1) The Board may require carriers to enter into reciprocal switching agreements, where it finds such agreements to be practicable and in the public interest or where such agreements are necessary to provide competitive rail service.

Id.

What the Railroads are really attempting to do is to rewrite 49 U.S.C. § 11102(c) by adding the inserted text below, which is clearly not in 49 U.S.C. § 11102(c):

(c)(1) The Board may require carries to enter into reciprocal switching agreements [**in terminal areas**] where it finds such agreements to be practicable and in the public interest or where such agreements are necessary to provide competitive rail service.

This may be the way the Railroads wish Congress had drafted 49 U.S.C. § 11102(c), but that is not the way Congress chose to do so. The plain text of 49 U.S.C. § 11102 does not limit the Board’s authority to order reciprocal switching relief to terminal areas.

B. The Railroads’ Argument Finds No Support in the Legislative History of 49 U.S.C. § 11102

The Railroads claim that their construction of 49 U.S.C. § 11102 is supported by the legislative history. That is not the case. As is evident from the House Committee report accompanying its version of the Staggers Act, Congress intended that the Board order reciprocal switching “[in] geographic areas where reciprocal switching is feasible.”

This section [Section 306 of H.R. 7235] empowers the Commission [now the Board] to approve reciprocal switching agreements and joint service agreements upon request of a carrier or shipper. *In geographic areas where reciprocal switching is feasible*, it provides competition to the benefit of shippers served.

H.R. Rep. No. 96-1035 at 67 (1980) (emphasis added).

Similarly, the Staggers Act Conference Report states:

The Conference substitute adopts the House provision [on reciprocal switching]. The Conferees note that [what is now 49 U.S.C. § 11102] . . . has been expanded to include all facilities, not just the joint use of terminals.

H.R. Rep. No. 96-1430 at 117 (1980).

Thus, the legislative history of 49 U.S.C. § 11102 makes clear that the Board’s power to order reciprocal switching is not limited to terminal areas, but instead

broadly applies to any “geographic area[] where reciprocal switching is feasible.” H.R. Rep. No. 96-1035 at 67 (1980).

While Congress left it to the STB to determine the “geographic areas where reciprocal switching is feasible,” it instructed the Board to aggressively utilize its power to make these determinations to “permit and encourage reciprocal switching as a way to encourage greater competition” and “improve shipper service and efficiency:”

[R]eciprocal switching has been limited to situations where competition between rail carriers is not threatened. The Committee intends for the Commission [now the Board] to permit and encourage reciprocal switching as a way to encourage greater competition. Likewise joint service agreements should be encouraged in order to improve shipper service and efficiency.

Id. at 67.

**C. The Railroads’ Argument Finds No Support
In the Case Law**

The Railroads claim their construction of 49 U.S.C. § 11102 is supported by ICC case law. That is not correct. The pre-Staggers Act ICC case law generally defined reciprocal switching as switching that took place within a “defined [geographic] area.” *See, e.g., Absorption of Switching to or from High Point, N.C.*, 319 I.C.C. 522, 525 (1963) (“[r]eciprocal switching . . . effect[s] switching deliveries within a switching district or other defined area”); *Switching & Minimum Carload Charges, Houston, TX*, 351 I.C.C. 146, 173 (1975) (same).

A “geographic area” can and does include areas other than terminal areas. *See Central States, Inc. v. ICC*, 780 F.2d 664, 682 (7th Cir. 1985) (Cudahy, J.

dissenting) (“[a] ‘geographic area’ in the contemplation of Congress [under what is now 49 U.S.C. § 11102(c)] was territory having political, economic and legal definition (within which presumably reciprocal switching would be operationally and economically feasible.”)).

The Board’s proposal to grant feasible reciprocal switching within a reasonable distance from carrier interchanges is clearly permissible because it defines the “geographic area” where switching can occur as an area encompassing a carrier interchange plus a reasonable distance from that interchange.

D. The Railroads’ Argument Finds No Support in The Board’s *Bottleneck Case* Decisions

The Railroads argue that if reciprocal switching is not limited to terminal areas, it may run afoul of the Board’s *Bottleneck Case* rules governing what routes a carrier must open up to its competitors. This is also incorrect. The Board’s *Bottleneck Case* rules set forth standards governing the Board’s prescription of through routes and joint rates. *See Central Power & Light Co. v. Southern Pacific Transp. Co.*, 1 S.T.B. 1059 (1996) , *clarified*, 2 S.T.B. 235 (1997), *aff’d sub nom. MidAmerican Energy Co. v. STB*, 169 F.3d 1099 (8th Cir. 1999).

The Board’s proposed reciprocal switching rules do not involve the Board’s prescription of through routes and joint rates. Instead, the Board’s proposals are directed at the Board’s prescription of switching agreements to perfect a competitive carrier’s single-line routes and rates. *See* NPR at 2 (“[r]eciprocal switching . . . enables a competing carrier to offer its own single-line rate to compete with the incumbent

carrier's single line-rate, even if the competing carrier's lines do not physically reach a shipper's facility").

E. Unit Train Interchanges Are Terminal Facilities

Even assuming, *arguendo*, that the Board's power to order reciprocal switching is limited to "terminal facilities, including mainline tracks for a reasonable distance outside a terminal" (49 U.S.C. § 11102(a)), reciprocal switching should be available to unit train coal shippers because unit train interchanges fall within the statutory definition of "terminal facilities."

Terminal facilities include property that is used to "transfer, collect, or deliver" freight (*CSX Corp. – Control – Chessie System, Inc.*, 363 I.C.C. 521, 585 (1980)), and, when determining whether a particular facility fits within the statutory definition of terminal facility, the Board is directed to construe the definition "liberally" since 49 U.S.C. § 11102(a) is a "remedial" provision. *Id.*

Unit train interchanges are carrier property that is used to "transfer . . . and deliver" freight, so they fall within the general definition of a terminal facility. In addition, this construction of the statute advances the remedial purpose of 49 U.S.C. § 11102 by according unit train shippers, including unit train coal and agricultural commodity shippers, whose trains are frequently interchanged in rural areas, the same right to reciprocal switching as that afforded to chemical shippers whose trains are usually interchanged in or near urban rail yards. *See* NPR at 14.

II. The Board Has Properly Explained Its Decision to Eliminate the Anticompetitive Conduct Standard

In the NPR, the Board provided a reasonable and thorough explanation for its decision to eliminate the anticompetitive conduct standard. Specifically, the Board found that:

- Nothing in the text of 49 U.S.C. § 11102 “mandates a finding that a rail carrier has engaged in anticompetitive conduct.”²⁷
- Nothing in the legislative history of 49 U.S.C. § 11102 indicates that Congress intended the ICC or the Board to impose the anticompetitive conduct test. In fact, the legislative history of 49 U.S.C. § 11102 shows that Congress “clearly intended to empower the agency to encourage the availability of reciprocal switching when appropriate.”²⁸
- While Congress “gave the Board the power to order reciprocal switching, . . . our existing anticompetitive standard has essentially nullified this power.”²⁹
- “[T]he Board has broad discretion under § 11102(c) to require carriers to enter into reciprocal switching arrangements when they are practicable and in the public interest or necessary to provide competitive rail service.”³⁰
- The Board’s exercise of its broad discretion removes an extra-statutory requirement to obtain relief under § 11102(c) that mistakenly “operated as a bar to relief rather than as a standard under which relief could be granted.”³¹

²⁷ *Id.* at 10.

²⁸ *Id.* at 15.

²⁹ *Id.* at 32 (Vice Chairman Miller, commenting).

³⁰ *Id.* at 10.

³¹ *Id.* at 9.

- The Board’s removal of the anticompetitive conduct standard is consistent with the Board’s policy that when “important available remedies have become dormant, the agency has examined the underlying regulations and pursued modifications, where appropriate.”³²

- The Board’s proposed actions also properly recognize that the railroad industry has changed dramatically since the current reciprocal switching rules were initially promulgated in 1985 and takes into account “the reduced competitive options for some shippers,” and “the better overall economic health of the rail industry.”³³

- When the ICC adopted the anticompetitive conduct standard in 1985, it recognized that it was exercising its discretion to adopt “one approach of several it could take.”³⁴

- The STB “retains broad authority to revise its statutory interpretation and the resulting regulations” so long as it provides a “reasoned explanation for departing from past precedent and has explained why the rules are a permissible exercise of its jurisdiction under § 11102.”³⁵

- The STB has provided a reasonable explanation in the NPR for removing the anticompetitive conduct test, and the result constitutes a permissible construction of § 11102.³⁶

- Congress did not “even mention[,]” much less “ratif[y] the anticompetitive conduct test when it enacted the ICC Termination Act of 1995.”³⁷

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 10.

³⁵ *Id.*

³⁶ *Id.* at 10.

³⁷ *Id.* at 12.

The Railroads claim that the Board’s analysis is flawed. However, they offer no new arguments. They simply repeat the same arguments that the Board considered and properly rejected in the NPR.³⁸ The Board properly exercised its discretion to eliminate the anticompetitive conduct test by providing a detailed explanation for its decision to adopt a new, but permissible, application of its authority to order reciprocal switching under 49 U.S.C. § 11102(c). *See Greater Bos. Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970) (agency must provide “a reasoned analysis indicating the prior policies and standards are being deliberately changed, not casually ignored”); *Chevron U.S.A., Inc. v. Nat. Res. Def. Council*, 467 U.S. 837, 865-66 (1984) (courts will defer to agency’s permissible statutory interpretations).

III. The Board Should Adopt Procompetitive Reciprocal Switching Compensation Standards

For reciprocal switching to be effective, rail carriers must aggressively compete for the shipper’s long-haul business. Whether rail carriers will do so remains to be seen. *See, e.g.*, Comments of the Western Coal Traffic League, *Competition in the Railroad Industry*, EP 705 (filed Apr. 13, 2011) (discussing the absence of effective competition for the transportation of western coal). In addition, reciprocal switching fees – either fees agreed upon by the carriers or those set by the Board³⁹ – must be set at

³⁸ *See, e.g.*, NS Comments at 39-45 (arguing that Congress has repeatedly ratified the anticompetitive conduct standard) repeating similar arguments it made earlier in EP 711 and which the Board considered and rejected in the NPR at 11-13.

³⁹ Under 49 U.S.C. § 11102(c), “[t]he rail carriers entering into [an STB prescribed reciprocal switching] agreement shall establish the conditions and compensation applicable to such agreement, but, if the rail carriers cannot agree upon

competitive levels for reciprocal switching to provide an effective competitive alternative.

The Railroads propose the Board adopt reciprocal switching fees that compensate the incumbent carrier for its “lost opportunity” costs.⁴⁰ The Board should summarily reject such proposals because, if adopted, they will preclude, not promote competition. Indeed, under the Railroads’ theory, the incumbent carrier will effectively continue to capture any lost contribution that it might have received by handling the traffic over the entire route of movement. However, such an approach, if adopted, would gut reciprocal switching as a viable competitive option for shippers because the new switching carrier then has no economic incentive to handle the traffic or, if the shipper is directly saddled with the lost opportunity cost, the shipper’s costs for such services would, by definition, lack a competitive element that would induce the shipper to choose the reciprocal switch option. The Railroads also ignore that determining such costs is extremely difficult because monopoly opportunity costs are difficult to ascertain, as there is no competitive marketplace for such services. NS, for example, suggests that the Board consider using efficient component pricing (“ECP”) as a baseline for such

such conditions and compensation with a reasonable period of time, the Board may establish such conditions and compensation.” *Id.*

⁴⁰ AAR Comments at 46-49; NS Comments at 64-69; CSXT Comments at 85-96; UP Comments at 51-54.

compensation,⁴¹ but the Board has repeatedly rejected ECP compensation schemes in other contexts, including maximum reasonable rate proceedings.⁴²

The Board also faced the lost opportunity cost issue years ago in railroad crossing cases. In those cases, new railroads sought crossing rights under 49 U.S.C. § 10901(d) to perfect their ability to access theretofore captive facilities. The incumbent carriers urged the Board to set crossing fees to compensate them for their lost opportunity costs. The Board rejected these requests on grounds that the resulting crossing fees would effectively preclude, not promote, competition.⁴³

WCTL/MP has reviewed the compensation approach proposed by the NITL. This approach has merit insofar as it closely tracks the Board's SSW Compensation Methodology,⁴⁴ but correctly adjusts it to reflect the potential double count of the return on investment portion of URCS and for the fact that the switching carrier is not incurring station clerical costs. The NITL approach also has the benefit of avoiding a long and complicated line-specific earnings and market value analysis in

⁴¹ NS Comments at 66-67.

⁴² *Major Issues* at 36-39.

⁴³ See, e.g., *Louisville & Jefferson Co. & CSX Const. & Oper. Jeff. KY*, 4 I.C.C.2d 749, 759 (1988) ("Improving service to shippers and fostering competition are key elements of the rail transportation policy. . . . [The carrier] is asking us to take an action that would preclude [the building of a crossing] . . . on the grounds that the new operation may cause it to lose business. Nothing in the rail transportation policy requires us to insulate individual carriers from the pressures of competition. To the contrary, the rail transportation policy directs us to promote competition.").

⁴⁴ *St. Louis Southwestern Ry. – Trackage Rights Compensation*, 1 I.C.C.2d 776 (1984) and *St. Louis Southwestern Ry. Compensation – Trackage Rights*, 4 I.C.C.2d 668 (1987) (collectively "SSW Compensation Methodology").

order to determine the ROI for the incumbent by using a readily calculable system-average ROI per car-mile compensation process. Given the Board's continued approval of simplified, system-average calculations and the shippers' clear need for a quick way to determine reciprocal switching fees, the NITL methodology has clear benefits versus the Board's SSW Compensation scheme, and WCTL/MP supports its implementation.

CONCLUSION

WCTL/MP request the Board to adopt final rules that are consistent with the views set forth in their Joint Comments and their Joint Reply Comments.

Respectfully submitted,

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