



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

February 14, 2022

Hon. Martin Oberman
Chairman
Surface Transportation Board

Hon. Michelle Schultz
Vice Chairman
Surface Transportation Board

Hon. Patrick Fuchs
Member
Surface Transportation Board

Hon. Robert Primus
Member
Surface Transportation Board

Hon. Karen Hedlund
Member
Surface Transportation Board

RE: STB Docket No. EP 711 (Sub-No. 1) Reciprocal Switching

Dear Chairman Oberman, Vice Chairman Schultz, and Members Fuchs, Primus and Hedlund:

The U.S. Department of Agriculture (USDA) appreciates that the Surface Transportation Board (Board) has brought reciprocal switching back to the forefront with its March 15-16 public hearing. USDA shares the perspective voiced by the U.S. Department of Transportation (DOT) in 2016. DOT then noted it “appreciates the Board’s careful attention to the evidence and recommendations that stakeholders have raised in the course of these proceedings over the past several years. Although there is disagreement among interested parties over the Board’s proposal, the Department nonetheless recognizes the Board’s interest in striking the correct balance here, making relief available to shippers in appropriate cases while working to maintain competition and efficiency in the operation of the rail network as a whole.” USDA believes the Board’s 2016 Notice of Proposed Rulemaking (NPRM) and public hearing are steps in the right direction and that reciprocal switching—properly designed—is in the public’s interest.

USDA notes the Board’s attention in this hearing focuses on recent changes in the rail industry—specifically, “significant operational changes in and affecting the freight rail industry.” However, USDA encourages the Board to consider the rail industry’s evolution—positive and negative—over the past 40 years. Railroads are much more profitable than they have ever been in the past, and significant industry consolidation has altered the competitive landscape. The number of Class I railroads has fallen from 41 in 1979 to only seven in operation since the late 1990s. The Board’s recent rate study shows that, since 2011, rail rates for grain have exceeded their level in 1985. USDA believes the importance of broad industry changes over the past few decades greatly outweigh the importance of recent changes to rail operations. Moreover, the Board needs

to ensure that operational changes, which do evolve over time (e.g., the emergence of precision scheduled railroading), take place against a regulatory backdrop that promotes a competitive and balanced environment. For these reasons, USDA encourages the Board to move beyond continual discussions of change and act on reciprocal switching.

In its December 28, 2021 decision, the Board asked for stakeholder comments with “additional or modified views,” since the 2016 NPRM. USDA’s position on reciprocal switching has not changed. This letter briefly reaffirms its past positions—foremost among these, that the benefits of reciprocal switching exceed the costs. Further, USDA believes the final rule should be structured to enable shippers to bring a case based on information they have available to them (e.g., the benefits and need for a switch). USDA also maintains the railroads should be required to provide information they have (e.g., the costs of a switch). A few elaborations on these points, as follows:

- **USDA believes there would be large benefits in abandoning the overly burdensome Midtec standard for granting a reciprocal switch.** The Board is charged with ensuring shippers do not face unreasonable rates and service. Essentially, two ways exist to ensure rates and service are reasonable: competition and regulation. With only seven railroads operating across the entire United States, many locations severely lack competition. In these competition “deserts,” the Board should inject additional competition and access, while making its rate review procedures more accessible and effective. Shippers must be protected from unreasonable rates and service that come from a lack of competition.
- **The benefits from enhanced competition should exceed the costs, and the Board’s NPRM guards against instances where the reverse is true.** In 2013, USDA and DOT provided analysis showing the National Industrial Transportation League’s (NITL) reciprocal switching proposal would affect only 2 percent of grain revenues and 2 percent of overall revenues. It is worth remembering, during the Board’s 2019 hearing on demurrage and accessorial charges, that multiple railroads downplayed the significance of these charges as representing only 1 to 3 percent of their revenues. Regarding reciprocal switching, USDA believes the benefits of added competition and better rates and service outweigh the potential costs of reduced revenue to railroads—an amount they once portrayed as insignificant. It is also worth noting the USDA and DOT calculations were the *maximum* projected effects, and in previous comments, USDA described several reasons the maximum estimate is unlikely to be realized. Moreover, the Board’s proposed case-by-case process, rather than NITL’s bright-line rules approach, further avoids granting a switch where the costs outweigh the benefits.
- **USDA encourages the Board to construct its two-pronged approach to resemble its recent streamlined market dominance test.** To bring a case before the Board, shippers should have to meet clearly defined standards, such as a working switch nearby, a threshold revenue-to-variable cost ratio for the railroad in question, and lack of access to inter- and intra-modal competition. Meeting these standards should make a prima facie case that a switching option is warranted. Railroads would then have the responsibility to dispute those claims or show sufficient evidence that the costs of the switch outweigh the benefits. These straightforward thresholds—designed around information shippers

already have—would ensure the process is accessible. An accessible option at the Board would provide the necessary backstop to incentivize shippers and railroads to find workable solutions without bringing a formal case. In a similar vein, the Board should make its access pricing as clear and concrete as possible, so as to incentivize railroads and shippers to settle on a switch with a reasonable access price, without having to bring a formal case.

In conclusion, USDA appreciates the Board's attention to reciprocal switching. USDA believes the benefits of granting shippers a reciprocal shipping option outweigh any potential costs. The Board is encouraged to quickly finalize an accessible and efficient reciprocal switching rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Moffitt". The signature is written in a cursive, flowing style.

Jennifer Moffitt
Under Secretary
Marketing and Regulatory Programs