

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE No. 711 Sub-No. 1

PROPOSED CHANGES TO RULES
REGARDING RECIPROCAL SWITCHING

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The Brotherhood of Locomotive Engineers and Trainmen represents nearly 32,968 professional locomotive engineers and trainmen throughout the United States. BLET is the collective and bargaining representatives of the majority of railroad engineers engaged in train operations in passenger and freight railroads. Locomotive engineers and trainmen are directly involved in train movements such as switching because locomotive engineers “drive” the trains. Changes in rules concerning reciprocal switching affect locomotive engineers and trainmen because they perform the switches; and BLET’s collective bargaining agreements with the railroads govern the rates of pay, rules and working conditions of employees who perform switches, including which employees can do the work for a particular railroad. BLET, and its individual and collective members also have a direct safety interest in the outcome of this proposed new regulation regarding reciprocal switching.

SUPPLEMENTARY INFORMATION:

In *Reciprocal Switching* (*NPRM*), EP 711 (Sub-No. 1) et al., (STB served July 27, 2016),^[2] the Board proposed new regulations under which the Board would exercise its statutory authority to require rail carriers to establish switching arrangements in certain circumstances

Under reciprocal switching, an incumbent carrier transports a shipper's traffic to an interchange point¹, where it switches the rail cars over to the competing carrier. The competing carrier pays the incumbent carrier a switching fee for bringing or taking the cars from the shipper's facility to the interchange point, or vice versa. The switching fee is incorporated in some manner into the competing carrier's total rate to the shipper. Reciprocal switching thus 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. *NPRM*, EP 711 (Sub-No. 1) et al., slip op. at 2.

Reciprocal switching can occur as part of a voluntary arrangement between carriers, or it may be ordered by the Board. Under section 11102, the Board may require the establishment of a switching arrangement when it finds that the arrangement either (1) is practicable and in the public interest, or (2) is necessary to provide competitive rail service. [49 U.S.C. 11102\(c\)\(1\)](#). Section 11102(c)(1) authorizes the Board to establish the conditions of and compensation for switching service if the affected carriers cannot reach agreement on those matters within a reasonable period. The Board's implementation of section 11102 is guided by the rail transportation policy set forth in [49 U.S.C. 10101](#). See *NPRM*, EP 711 (Sub-No. 1) et al., slip op. at 16.

¹ An interchange is a physical location located on a railroad where two railroads come together such as an interlocking or a wye.

The BLET stands in opposition to any changes to the NPRM (Reciprocal switching) that expands current rights or gives additional rights to rail carriers for reciprocal switching. This is due to the following reasons. Current longstanding rules and precedent should not be departed from due to a perceived solution that is non-existent and not provided for by a practice labeled “reciprocal switching.” The NPRM, if adopted, would hurt railroad workers. The performance of work by Railroad workers is governed by different contracts with the railroads which establish their collectively bargained rights over certain railroads’ lines, including which employees have the right to perform such work. Allowing other railroads to use their own employees to perform work on the lines of a railroad covered by a different contract would infringe on these current rights and could cause or allow the railroads to provide service based upon who pays the lowest wages to their workers, rather than on who provides the best or most expedited service. No matter who has trackage rights in a given location, the infrastructure of that location cannot change and will not change as the result of any newly conferred “reciprocal switching” rights.

No additional rights gained via regulation or legislation can surmount the physical limitations that exist where two or more railroads exchange rail cars at an interchange. An equally important factor is that a given type of switching such as “reciprocal switching” cannot change who the controlling railroad is and how that controlling railroad chooses to manage their railroad traffic and switching movements. That means that the owning railroad will still control the movements of trains of another railroad engaged in a “reciprocal switch”, so there is no guarantee that the “guest” railroad’s train will be afforded priority or even equal treatment in authorization for movement.

The Mega-mergers approved during the 1990’s essentially created Class I duopolies in every region of the country in doing so, the regulators found the “bigness” of the merged carriers to be a net positive despite the lessening of competition and, thus, in the public interest.

Because of this structure, and associated problems there have been suggested remedies based on a philosophical outlook that does not fit the railroad industry. BLET believes a more productive approach is to define minimum adequate service standards consistent with the railroads’ common carrier obligation, and to create a mechanism for regulatory enforcement that shippers, particularly small shippers can access at a reasonable cost.

When discussing with shipper associations over the past year have revealed apprehension over the potential of railroad retaliation that has become prevalent, if not rampant in every association with whom we have engaged. Even big shippers are reluctant to pursue the remedies available to them, except on rare occasions. These factors, too, are part of the reason we believe that small shippers would be much better off with effective enforcement of service standards to make sure they are served and served adequately.

Allowing other railroads to be able to switch on other railroad properties will likely add to the delays and possibly increase the probability of poor communication and confusion over prevailing operating rules. For example, if the Railroad A crosses onto Railroad B to provide switching service for a customer, then the time the RR-A train crew spends occupying the mainline to switch this customer then clear up, causes all RR-B trains that use this mainline to sit around and wait for

the RR-A crew to clear. This is time that the RR-B crew could have used to switch other customers or through freight trains to travel across this line to get to their destination.

Required reciprocal switching may also result in communication problems due to differing radio frequencies crews of different carriers need to use for coordinating movements with multiple dispatchers in different territories controlled by different railroads. Sowing confusion cannot be allowed to be a prominent feature of a new switching rule.

We believe that if small shippers were asked to choose between being able to get a better rate by reciprocal switching or being assured regular, reliable service when they need it without crippling conditions or surcharges, we believe they would prefer the latter.

Unions should be involved from the beginning of any process concerning switching. Our national agreements include provisions that facilitate adjusting operational work rules to address problems with specific shipper locations. However, if the railroad is looking to simply chase away business that isn't profitable enough, it will never approach us for assistance in addressing legitimate shipper concerns. And, if a "guest" railroad can traverse the tracks of a host railroad based on STB rule, then our national agreements that govern such operations will be negated by STB order.

The convoluted strategy of reciprocal switching can be avoided by holding railroads accountable for proper interchange schedules. Railroads also create delays due to running very long trains that can tie up to four miles of railroad per train. This results in two things at once. It helps fulfill a railroad's cost cutting business model (e.g., Precision Scheduled Railroading or "PSR") by reducing the number of train crews utilized, but it also intensifies rail congestion. Railroad infrastructure was not designed to accommodate trains of such length and weight. Before PSR and before railroads began running very long trains to cut on crew starts, the railroad industry enjoyed higher train velocity. Railroad customers received better and more frequent service. In the 90's and early 2000's freight railroads ran more than double the trains that they run today. They worried more about safety and their customer's satisfaction than about the number of crew starts and Wall Street business plans. The STB should focus on the real problem in the industry and focus on real solutions; it should not adopt a new reciprocal switching rule that will not actually solve the real problem, will likely cause other problems, and adversely affect railroad workers.

Respectfully submitted,

/s/ Dennis Pierce

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