

SERVICE DATE – JANUARY 28, 2022

SURFACE TRANSPORTATION BOARD

DECISION

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

RECIPROCAL SWITCHING

Digest:¹ This decision partially denies a request to modify the procedural schedule. All dates set in the Board’s December 28, 2021 decision remain unchanged, including those for a public hearing that the Board will hold in March.

Decided: January 28, 2022

By notice served on December 28, 2021 (Hearing Notice), the Board announced that it will hold a public hearing on March 15 and 16, 2022, concerning the reciprocal switching regulations it proposed in this proceeding. Among other things, the Board stated that notices of intent to participate are due by January 27, 2022, and that written comments and testimony are due by February 14, 2022.

On January 10, 2022, the Association of American Railroads (AAR) filed a motion to extend the procedural schedule. Specifically, AAR asks the Board for a 75-day continuance of the schedule, including a corresponding continuance of the public hearing. (Mot. 1.) In the alternative to a 75-day continuance, AAR asks the Board to extend the deadline for written submissions to March 7, 2022, and permit submission of supplemental written comments “within a reasonable time” following the hearing. (Id. at 7.) AAR asserts that the proceeding has remained largely dormant since early 2017 and that it and other parties need time to re-familiarize themselves with the record and prepare testimony and comment. (Id. at 4-5.) AAR adds that much of the principal data used for previous analyses and submissions is now more than seven years old and that it and many parties will be engaged with other Board matters over the coming weeks. (Id. at 5-6.)

On January 18, 2022, the Board received four replies to AAR’s motion. The American Short Line and Regional Railroad Association (ASLRRA) filed in support of AAR’s 75-day extension request, arguing that more time is necessary for ASLRRA to consult with its members to determine what additional or updated details would be informative for this proceeding.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

(ASLRRA Reply 2.) A group of shipper trade associations (the Coalition Associations)² opposes the motion in all respects, except for the request to accept supplemental written comments after the hearing, which these shippers support provided that such comments are limited to responding to pre-hearing written testimony and testimony at the hearing. (Coal. Ass'ns Reply 2.) The Private Railcar Food and Beverage Association, Inc., and the Freight Rail Customer Alliance filed comments opposing AAR's motion.

DISCUSSION AND CONCLUSIONS

AAR's request for a 75-day continuance of the procedural schedule, including postponement of the hearing, will be denied. Although AAR argues that it needs additional time to re-familiarize itself with the record and update its analyses and ASLRRA argues that it needs more time to consult with its members, the Board's schedule already provides sufficient time for those purposes. As AAR acknowledges, the Board issued a press release on November 12, 2021, announcing the hearing dates and an overview of the hearing's focus. (Mot. 3, 4 n.4.) The Board provided more detail in the Hearing Notice, giving parties 48 days from the date of the notice to submit written testimony and 77 days to prepare for the hearing. See Hearing Notice, EP 711 (Sub-No. 1), slip op. at 6 (identifying areas of interest that parties might wish to address through written testimony before the hearing). Accordingly, the Board finds that the amount of notice and time for preparation provided was sufficient, particularly in this matter where parties have had many opportunities to develop the record. AAR's alternative request to extend the comment deadline to March 7, 2022, also will be denied, as that extension would hinder the Board's ability to review parties' submissions before the hearing as well as the parties' ability to address such submissions when testifying orally at the hearing.

As noted above, part of AAR's alternative request is that the Board allow supplemental written comments after the hearing, and the Coalition Associations offer qualified support for that request. The Board will not rule on this aspect of AAR's alternative request at this time but will determine after the hearing whether to allow supplemental written comments.

It is ordered:

1. AAR's motion is denied in part as discussed above.
2. The decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

² The Coalition Associations consist of the American Chemistry Council, The Chlorine Institute, the Corn Refiners Association, The Fertilizer Institute, and The National Industrial Transportation League.