

307429

November 7, 2023

ENTERED
Office of Proceedings
November 7, 2023
Part of
Public Record

The Honorable Martin J. Oberman
The Honorable Patrick J. Fuchs
The Honorable Michelle A. Schultz
The Honorable Robert E. Primus
The Honorable Karen J. Hedlund
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Subject: Comments on EP 711 (Sub-No. 2), Reciprocal Switching For Inadequate Service

Dear Members:

As I have previously noted in correspondence in EP 711 (Sub-No.1), I oversee the operations and commercial aspects of rail transportation and logistics for Lyondell Chemical Company, Equistar Chemicals, LP, LyondellBasell Acetyls, LLC, and LyondellBasell Advanced Polymers Inc. (collectively, "LyondellBasell"). LyondellBasell supports the Board's efforts to address rail-freight service issues by improving access to reciprocal switching. The reliable and timely delivery of rail shipments—in addition to the efficient movement of such shipments—are essential for shippers like LyondellBasell to be able to conduct business. The impacts of untimely and unreliable service can have far-reaching consequences for chemical and polyolefin manufacturers like LyondellBasell.

An integral part of resolving service issues with access to reciprocal switching, however, requires that sufficient thresholds and processes be set in place to allow for meaningful access. Unfortunately, the proposed rules that the Board served on September 7, 2023, in the above-referenced docket fail to provide adequate thresholds and processes for reciprocal switching to meaningfully address inadequate service. Moreover, LyondellBasell urges the Board to continue pursuing increased access to reciprocal switching for rail customers without access to competitive rail transportation. Rail carriers must remain sufficiently incentivized to provide differential and ever-better performance in their operations, and competition would provide this incentive.

Scope of LyondellBasell's North American rail operations

LyondellBasell has 19 rail-served manufacturing facilities located in Iowa, Illinois, Indiana, Louisiana, Tennessee, Texas, and Virginia. These facilities receive service from all 6 Class I railroads via either single-carrier access service, multi-carrier access service, or reciprocal switching. From these facilities, LyondellBasell originates approximately 70,000 rail shipments per year of polyolefins and liquid chemicals, including hazardous materials and toxic inhalation hazard (TIH) materials. To support this rail operation, LyondellBasell operates 18,000 private

railcars comprising covered hopper cars and tank cars. And more than half of LyondellBasell's North America logistics expenses arise from rail logistics.

The currently proposed performance standards are inadequate

The proposed performance standards represent a significant departure from the rail performance shippers expect and need to conduct commercial activities efficiently. Indeed, the proposed performance standards are at levels that reflect industrywide rail service in May 2022, which represents some of the poorest rail service that rail customers have experienced in decades. Even if rail service fails to exceed the higher performance levels that Coalition Associations propose in their comments on the proposed rules, LyondellBasell would experience significant burdens. Thus, we urge the Board to adopt the higher standards proposed by the Coalition Associations, except with a higher 90% adequacy threshold for railcar spot-and-pull performance. These higher standards would more accurately reflect the minimum service levels that shippers and their customers expect and need to conduct their commercial activities on a reasonable economic basis.

The costs to rail customers of unreliable service and increasing transit times are significant. For example, the most practical option for a shipper to address unreliable service is to use additional railcars, including by placing more loaded and empty cars at production facilities to reduce the risk of disruptions from insufficient supply or insufficient cars for loading. When transit times increase, however, shippers must increase the number of railcars they use to offset increased cycle times. The additional costs to procure, maintain, and store the larger fleet are significant costs that shippers must bear even though these costs arise from the inadequate railroad service. Further, increasing fleet size cannot address all issues associated with untimely and inconsistent performance. For example, especially at facilities with less-than-daily service, a missed switch or delivery could result in an acute backup or unavailability of railcars. In such a situation, disruptions of manufacturing processes can easily follow, resulting in reduced production or even the complete shutdown of certain production operations. The shipper then directly bears the commercial losses attributable to these production cuts or shutdowns, all because the railroad did not meet performance expectations.

Indeed, railroad failures to deliver shipments within close proximity to their OETAs has forced LyondellBasell to incur (1) increased costs from diverting traffic to other sub-optimal modes of transportation, (2) lack of products at distribution facilities, which in turn has required LyondellBasell to use inefficient distribution sites and transportation means, and (3) reduced production rates, shutdowns, or both of its own and customer facilities.

Even when OETA performance reaches the fixed adequacy thresholds that Coalition Associations are seeking (i.e., 70% of shipments delivered within 24 hours of OETA, 80% within 48 hours, and 90% in 72 hours), LyondellBasell will have already proactively responded to the service constraints that resulted in this performance and incurred a substantial burden on its operations. For example, since most polymer plants produce materials coming off the

production line directly into railcars as the storage receptacle, LyondellBasell will likely have already reduced its production rates at such polymer sites well in advance of rail performance reaching the service-reliability thresholds proposed by the Coalition Associations. It also may have begun prioritizing customers for supply. For its liquid chemical business, these service levels require pre-positioning supply and empty cars to avoid supply disruptions. This pre-positioning activity produces a high demand for railcars.

Similarly, the transit-time increases of 15% year over year, or just 25% every three years, which the Coalition Associations have proposed and LyondellBasell supports in the absence of a higher standard, are burdensome. Over the 2020-2022 period, when LyondellBasell and other shippers experienced significant transit-time increases, LyondellBasell's railcar fleet expanded by approximately 8%.

Additionally, spot-and-pull performance along the lines of the adequacy thresholds that Coalition Associations have proposed still place significant burdens on LyondellBasell. If a railroad fails to spot and pull 90% of railcars in the planned service window, LyondellBasell is likely to experience production impacts. If a railroad fails to spot or pull a railcar two serving windows in a row, it could have the effect of disrupting an entire day of production at the particular LyondellBasell facility, especially when there are no on-site switching means or if the site has rail space limitations. A complete no show by a railroad for spots and pulls during a service window would have even greater consequences.

For these reasons, LyondellBasell supports the Coalition Associations' proposed modifications to the service-performance standards in the proposed rules. Also, given that LyondellBasell would likely experience production impacts if railroads fail to spot or pull 90% of railcars in the planned service window and, according to performance data that railroads have provided in *Urgent Issues in Freight Rail Service—Railroad Reporting*, EP 770 (Sub-No. 1), railroad spot-and-pull performance has averaged approximately 90% industrywide over the past year, LyondellBasell urges the Board to adopt the Coalition Associations' proposed railcar spot-and-pull measure at a higher threshold of 90%. Railroads should be able to perform to this threshold since they have significant control over local service, especially because this service typically involves the same crews and equipment daily. Moreover, as railroad service performance continues to recover from the lows experienced during 2020-2022, the Board should adjust the standards to avoid institutionalizing poor performance and the associated burdens on rail customers.

The Board must establish an efficient process to resolve switch-fee disputes

If the Board does not create a fast, efficient process for resolving carrier disputes over reciprocal-switch fees, reciprocal switching will likely be economically impractical for shippers. Carrier disputes about fees for a prescribed switch under the proposed rules could be common. An incumbent has a strong incentive to offer an excessive switch fee to avoid losing captive traffic and its power to differentially price that traffic over a longer distance, absent the switch.

While a fee is being challenged, the shipper will still have to bear the fee either as a pass through or built into the alternate carrier's rate, which will discourage use of the reciprocal switch. Further, Board proceedings to resolve disputes over compensation for trackage rights and facility use indicate that similar disputes over an incumbent carrier's reciprocal-switch fee may take years. See, e.g., *N. England Cent. R.R.—Trackage Rights Order—Pan Am S. LLC*, FD 35842 (STB served Oct. 31, 2017) (taking approximately three years, including mediation period); *S. Plains Switching, Ltd.—Compensation for Use of Facilities in Alternative Rail Svc.—W. Tex. & Lubbock Ry.*, FD 35111 (STB served Dec. 15, 2008) (taking one year). Without a fast, efficient process to resolve fee disputes, these factors essentially guarantee that many shippers who receive a reciprocal-switch prescription under the proposed rules will likely face a switch fee that can negate the benefit of the switch. Moreover, if the fee-dispute process is lengthy, the shipper may face a high-switch rate while still receiving the poor service that led to the prescription.

The Board should continue to improve access to reciprocal switching for shippers without competitive rail options

We urge the Board to continue to pursue reforms that increase access to reciprocal switching for shippers without effective competition for their rail traffic. While increased access to reciprocal switching to address inadequate service is important, it should merely be an incremental step toward increasing access under the “necessary to provide competitive rail service” prong of 49 U.S.C. § 11102(c). Without competition, nothing discourages carriers from performing any better than necessary to avoid being deemed inadequate under the proposed standards. Ultimately, competition between rail carriers represents the best incentive for carriers to not only avoid inadequate service, but improve their service levels and offer service on reasonable terms and conditions.

Sincerely,

/s/Scott Campbell

Scott Campbell
VP, Supply Chain Americas