

November 7, 2023

Surface Transportation Board
395 E Street, SW
Washington, DC 20423

**Reciprocal Switching for Inadequate Service
STB Docket EP 711 (Sub. 2)**

Chair Oberman and Board Members Fuchs, Hedlund, Primus, and Schultz:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Surface Transportation Board's (STB) notice of proposed rulemaking regarding reciprocal switching for inadequate rail service. TTD consists of 37 affiliate unions representing the totality of rail labor.¹ Our affiliated unions represent workers across all railroad crafts, who are vital to keeping our railroad system operating successfully and safely every day. We appreciate the Board's effort to address the longstanding issues with Class I railroad service, but we continue to have concerns about reciprocal switching and the current proposed rule as outlined below.

By way of background, rail labor expressed significant concerns about the Board's 2016 proposal to require reciprocal switching in response to shipper complaints about a dearth of competition in certain locations or for certain commodities.² Rail labor believed that forcing railroads to engage in this practice so that select shippers could lower rates on a specific route undermines the ability of freight railroads to maintain a national network and serve all customers. Additionally, reciprocal switching can interfere with labor agreements in some cases and cause the dislocation of existing operating employees.

The Board's most recent proposal to address inadequate shipping through reciprocal switching refocuses the issue specifically on service problems. The rule would set standards for metrics including Original Estimated Time of Arrival, transit time, and Industry Spot and Pull. A shipper could petition for a reciprocal switching agreement in situations where a carrier is unable to meet said metrics and the shipper is dissatisfied with the carrier's current performance. We greatly appreciate the Board taking this proposed rule in a more targeted approach involving cases of inadequate freight service. However, the labor concerns we note above are inherent to any forced reciprocal shipping agreement, regardless of circumstance.

¹ Attached is a complete list of TTD's affiliate unions.

² See rail labor filings in docket No. Ex Parte 770

Recent attempts to address service problems are largely a result of the Class I rail industry's widespread adoption of Precision Scheduled Railroading (PSR). This operating change has led to a nearly 30% reduction in the Class I workforce since 2016, with a 10% reduction having occurred since 2019 alone. This massive reduction in workforce was accompanied by the removal of thousands of locomotives and railcars from service.³ Other cost-cutting measures implemented by numerous railroads, including substantial increases in train length and reductions in rail car and locomotive inspections, have also contributed to the decline in service standards. We appreciate the Board's decision to prevent claims of insufficient manpower and motive power from serving as an affirmative defense for a carrier defending against a petition for reciprocal switching under its proposed rule. However, the proposed rule does not get at the root of rail service issues, which stem largely from cost-cutting business models that do not prioritize quality or consistency for customers.

Rail carriers once sought to accommodate shippers' unique requirements and schedules. Now, PSR dictates that rail cars operate on a set and often arbitrary schedule, arriving and departing at specific times regardless of the needs of customers. PSR proponents claim that this improves train velocity – how quickly trains can move from one terminal to another, not how quickly and responsively cars are picked up from and delivered to a shipper's facility. However, the ultimate goal of PSR is to prioritize profits over service. We agree that the PSR operating model places a burden on shippers, including the substantial financial cost they incur at the railroads' monetary benefit. However, forced reciprocal switching, and the rule as most recently proposed by the Board, will not resolve the overall decline in rail service driven by PSR.

We respectfully request that the Board instead consider bolstering the definition of the railroads' common carrier obligation in order to improve freight rail service. The Board held unprecedented emergency hearings on railroad service in April 2022 as a result of widespread service failures. As a result of stakeholder testimony, the Board subsequently required the Class I railroads to provide additional data reporting and service recovery plans. In May 2023, the Board renewed these requirements in full for three railroads and in part for another given a clear lack of progress toward improving rail service. Earlier this year, Chair Oberman noted that Union Pacific has had widespread service embargoes as a result of its deep cuts, "an approach, in my view, of questionable legality as a potential violation of the fundamentals of the common carrier obligation."⁴ Enforcing a robust common carrier obligation, rather than relying on forced reciprocal switching agreements, would hold railroads collectively accountable for providing a higher quality of service and more effectively address many of the problems shippers continue to experience.

In addition, the Board made note of the lack of clarity in terms of the scope of the common carrier obligation in its June 2023 decision following the Navajo Transitional Energy Company's ex parte application seeking an emergency service order to address service concerns with regard to BNSF

³ See rail labor filings in docket No. Ex Parte 770.

⁴ Chair Marty Oberman Speech Before North American Rail Shippers, May 2023: https://www.stb.gov/wp-content/uploads/Oberman_NARS_speech_052523.pdf

Railway Company (BNSF). Specifically, the Board writes, “Because the scope of the common carrier obligation has not yet been fully briefed, at this stage of this proceeding, it would not be appropriate for the Board to consider whether or to what extent the common carrier obligation requires a rail carrier to take reasonable steps to increase capacity in response to a request for service. But the Board notes here that self-imposed capacity constraints, such as voluntary reductions in crew levels, likely would not automatically be considered a justifiable basis for refusing otherwise reasonable requests for service.”⁵ Given the continued service problems in the industry, we believe the Board is likely to see additional requests for emergency service orders beyond the two shippers that have requested them to date. Rather than continue to consider each case ad-hoc, we believe that the Board should provide much needed overall clarity regarding the common carrier obligation and that this approach would be a more effective way to improve service.

We agree with the Board that further regulatory action is needed address the widespread service issues that have resulted from the Class I railroads’ collective decision to adopt the so-called PSR operating model. However, we do not believe that reciprocal switching is the answer, and that instead forced reciprocal switching agreements would create unnecessary complications when it comes to existing collective bargaining agreements and hinder efforts to improve rail service. Rather than imposing forced reciprocal switching agreements, we encourage the Board to use this opportunity to further delineate the scope of the common carrier obligation, which would provide much needed clarity on an important legal obligation of the railroads, target the heart of freight rail service problems, and holistically address the ongoing issues with the Class I railroads.

We urge the Board to take our concerns into consideration and appreciate the opportunity to comment on this proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Regan", written over a circular stamp or mark.

Greg Regan
President

⁵Docket No. NOR 42178