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## **NITL Webinar: STB EP 711 Rulemaking on Competitive Switching**

### **August 4, 2016**

### **Webinar Questions and Answers**

- 1. Will there be any public disclosure of any of these switch charges whether RR's agree, or the STB decides?**

TH: If the switching service is a common carrier service the rate would need to be public.

- 2. Is it automatic that switch charges established hereunder be absorbed into the rate of the new competing road?**

TH: Not necessarily.

- 3. Could a 3PL as a receiver, petition on behalf of its shipper customers?**

TH: Perhaps, if the 3PL is the payor of freight. Would require an analysis as to whether the 3PL had legal "standing" to file the case.

- 4. In track 1 to get open switching, what do we know about the "evidence presenting" sessions that will be conducted? Cost? Timeline until decision is reached? Is Legal representation required? It seems like this process would only apply to huge shippers and would be too much for small/medium sized shippers. Need to make case (like rate cases) for a small shipper path.**

TH: Legal representation would very likely be needed. NITL will be filing comments with the STB to support streamlining option #1 cases.

- 5. Can a shipper bring a case that a potential destination that they ship to should be open to switch? (Under the premise of a potential new market). Or, is the owner of the facility the only party that can argue for open access?**

TH: Potentially yes.

- 6. What does following criteria mean? We do not use intermodal. Would it apply? "There was no effective inter- or intramodal competition for the rail movements which could be conclusively established based on certain rate or market share standards"**

TH: This is the market dominance test, for which there are quantitative (i.e. R/VC ratio for the movement is 180% or higher) and qualitative requirements (i.e. no *effective* truck or water competition).

- 7. Under the Competitive Rail Service Remedy, would a shipper be able to request reciprocal switching for all of their volume out of a currently closed facility, or would a shipper have to submit a case on an origin/destination pair level, understanding that all lanes out of that origin may not meet the 180% R/VC threshold?**

TH: It depends on which option the shipper chooses to prove its case. Option 2 appears to require O-D movement specific evidence and a failure to meet the R/VC test for any specific movement would drop that lane. In contrast, the Option 1 prong benefits/detriments test does not require a movement-by-movement analysis and, thus, could be applied to all traffic at the facility .



**8. Could a class one use safety of switching a HazMat as a reason to not allow competitive switching?**

TH: Yes, that could be a factor argued by the railroad in a switching case but it would not be the only factor, and the shipper could present rebuttal evidence.

**9. How do we prevent excess rates on switch fees?**

TH: Railroads have the initial right under the law to agree on the switch fee. If the shipper is unhappy with the fee they can ask the STB to prescribe the rate. The STB has proposed switch fee methodologies which are being evaluated.

**10. Can a receiver ask for reciprocal switching if they do not pay the freight?**

TH: Unclear if the receiver would have legal standing to do so. Would require a factual analysis.

**11. If a shipper petitions for relief, what would be a reasonable period of time for a remedy? Is there anything established in the decision?**

TH: STB has proposed that the switching remedy would last as long as the criteria proven to obtain the remedy remain satisfied.

**12. If railroads don't agree on cost for one railroad to switch the other under these proposed regulations, when a shipper petitions for relief, and the railroads also don't go to the STB to resolve the switching amount, can the shipper go to the STB to force a reasonable switching fee?**

TH: Yes.

**13. If the railroads "agree" on an obviously irrationally high switching fee, can the shipper go to the STB for a more reasonable switching fee amount?**

TH: Yes, a shipper could challenge the rate before the Board but the process and standards for doing so are unclear at this time.

**14. What happens where 2 railroads had a working interchange but no longer use it? Could this situation be considered if reasonable infrastructure still exists?**

TH: Yes, if no construction is required to make the interchange a "working interchange".

**15. Can an exempt commodity or a boxcar shipper ask for a switching agreement?**

TH: Yes, but the exempt shipper would first need to petition to revoke the exemption.

**16. Can only a shipper ask for a switching agreement or can a receiver ask for a different delivering Class1?**

TH: Either the shipper or the receiver may petition for a switching remedy.

**17. What suggestions can shippers make to the STB to deal with instances when RRs agree on a non-competitive switch fee? There is no provision for the STB to act in this case.**

TH: Yes, a shipper could challenge the rate before the Board but the process and standards for doing so are unclear at this time.



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- 18. Does the NITL plan to comment on the STB's request for comment on the UP's proposal to include some compensation to the incumbent RR when a competitive switch is granted to a "competitive" RR?**

TH: Yes.

- 19. In Canada the CTA makes the switch fee why isn't the STB making the switching fee themselves, the fee can eliminate competition.**

TH: There are differences in the law in the U.S. and Canada. In the U.S., the governing statute provides the railroads with the initial right to determine all rates, including switch fees. The STB may prescribe a rate only upon complaint..