



Competitive Switching Key Concepts and Talking Points

BACKGROUND

By definition, “captive shippers”—companies whose facilities are served by a single Class I railroad—have no competitive alternative for their rail transportation requirements. As a result, they endure monopoly pricing and have no competitive options to address poor service. Federal regulations in place since the mid-1980s have blocked captive shippers’ one avenue of relief: competitive switching.

In July 2011, the National Industrial Transportation League (League) began an effort to have those regulations overturned and replaced by a new rule that would restore captive shippers’ statutory right to seek a competitive rail alternative. The League submitted a petition for rulemaking to the Surface Transportation Board (STB or Board), the successor to the Interstate Commerce Commission. The Board’s proceeding is docketed as Ex Parte 711.

In the five years since opening this proceeding, the Board accumulated an extensive record of supporting materials from the League, other shipper organizations and individual companies. The Board held a two-day public hearing in March 2014 and also received the opposing views of Class I railroads.

On July 27, 2016, in its response to the 2011 petition, the Board granted much of what the League requested. The Board set aside the old rules, proposed a new rule on competitive switching, and invited the League, the railroads, and other interested parties to comment.

WHAT IS “COMPETITIVE SWITCHING”?

Competitive switching is a tool to create a competitive environment for *captive shippers* by enabling them to gain access to the services of a nearby second railroad where physically possible. If the STB grants a captive shipper’s request for competitive switching, the second railroad would have the opportunity to bid for the shipper’s business. If the shipper accepts the second railroad’s bid, the railroad that has sole physical access to the captive shipper’s facility is paid to switch rail cars to the other railroad. However, the entry of a competing railroad may encourage the incumbent railroad to negotiate better terms to keep its customer and prevent the transfer of business to a competing railroad. In either case, competition provides a good result for the shipper.

WHAT HAS THE STB PROPOSED?

The STB proposal provides two paths to competitive switching: The shipper must show either that switching is (1) “practicable and in the public interest” or (2) “necessary to provide competitive rail service.” The STB will decide requests on a case-by-case basis, and base its decision on evidence presented by the shipper and railroad in question. Railroads can defeat the shipper’s case by demonstrating that the switch is unsafe or harmful to other shippers.

The two proposed paths are drawn from the federal law that deregulated U.S. railroads, the Staggers Rail Act of 1980. (Under the old rules, shippers seeking a competitive switching remedy were required to show that it is necessary to prevent an anti-competitive act, a bar so high that no shipper has succeeded in getting a favorable ruling by the STB.)

Shippers will provide supportive and detailed comments on the STB proposed rule focused on how important terms are defined, and keeping the administrative process from becoming as complex and costly as other STB procedures. The way in which the switching fee is to be determined is also a key matter to be resolved in this proceeding.

WHEN WILL THE STB'S RULING IN EP 711 TAKE EFFECT?

All interested parties must submit comments on the proposed rule by October 26, and replies to comments submitted to STB are due by January 13, 2017. Board members and staff will also hold meetings with commenters in January-February 2017. The STB will take all comments into consideration and then decide on a final rule, which is expected to be issued in 2017.

IS COMPETITIVE SWITCHING "RE-REGULATION"?

No. This is a claim made by Class I railroads for *any and every proposed change* to the status quo that greatly favors them over shippers. The League has merely asked the STB to equitably administer the Staggers Act, which *deregulated* the rail industry. The current rules governing competitive switching were issued when the rail industry was still emerging from a highly regulated, unprofitable environment. Today's railroads are highly profitable, and their market power is highly concentrated. Now it's time to recalibrate and rebalance those rules.

WILL COMPETITIVE SWITCHING LEAD TO CHAOS IN THE SWITCHING YARDS?

No. In Canada, which since 1904 has had an orderly and far more liberal process for shippers to obtain competitive switching, there is no chaos in the rail yards because the incumbent railroad competes to keep its customers. This leads to very few transfers of volume from one rail carrier to another, *better service*, and more efficient operations. In the U.S., competitive switching arrangements are far more common than the Class I railroads will readily admit. As an example, per the Union Pacific's Reciprocal Switching Circular, they alone have approximately 840 current reciprocal switching locations through agreements with other railroads where they hand off railcars to another railroad, so this activity is already part of their normal daily operations.

IS COMPETITIVE SWITCHING "FORCED ACCESS"?

No. The railroads claim that granting a competitive switch means the incumbent railroad must let another railroad use its tracks. As noted above, the incumbent line would perform the switch, for a fee, in a switching facility.

IS THIS A CASE OF GOVERNMENT INTERFERING IN THE FREE MARKET?

No. Competitive switching *promotes competition*, which is the cornerstone of a free market. It applies only to captive shippers and would require the shipper to pay an appropriate access fee to cover the railroad's costs, plus a reasonable profit. And it does not allow a shipper to obtain switching relief that would be unsafe or harm other railroad customers. In short, it would simply provide shippers with access to a competitive market.

CONCLUSION

Rail transportation is vitally important to League members and their customers, and many depend greatly upon efficient and effective rail service for the transportation of their goods. Class I railroads efficiently switch thousands of cars every week as part of their normal operations. Our goal is not to move massive amounts of volume from one rail carrier to another and create "chaos" in their operations as they claim will happen with this proposal; our goal is to *create a greater level of competition* in the rail industry. Competition works in every other industry, which drives innovation and ensures continuous improvement to control costs and allows companies to provide competitive goods and services in a global economy. The railroads are very uncomfortable with expanding competitive switching because they want to protect the market power that they currently enjoy. Captive shippers believe it is time for the railroad industry to provide their services in a truly competitive marketplace.