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Before the  
SURFACE TRANSPORTATION BOARD

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Ex Parte No. 711

PETITION FOR RULEMAKING TO ADOPT REVISED  
COMPETITIVE SWITCHING RULES

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RESPONSE

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May 30, 2013

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Preliminary Statement

Samuel J. Nasca,<sup>1/</sup> for and on behalf of United Transportation Union-New York State Legislative Board (UTU-NY),<sup>2/</sup> submits this Response to comments filed on or about March 1, 2013, in accordance with the Surface Transportation Board (STB) notice decided and served July 25, 2012. 77 Fed. Reg. 45327 (July 31, 2012).

1. Canadian Provisions. The thrust of the NITL submission, and those of its major supporters, is that the STB in

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<sup>1/</sup> New York State Legislative Director for United Transportation Union, with offices at 35 Fuller Road, Albany NY 12205.

<sup>2/</sup> UTU, effective January 1, 2012, merged with Sheet Metal Workers' International Association (SMWIA) to form International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART), in which many UTU members are now within its Transportation Division. (SMART-Transportation). Many UTU representation certificates are in the process of transfer at National Mediation Board proceedings, which at present have not been finalized for most operations in New York State.

revising its long-standing competitive access rules, should impose a form of "interswitching" authorized under Canadian railroad law. (NITL, 25-35, Ex. 2, Ex. 2).<sup>3/</sup> The NITL's heavy reliance upon Canadian switching rules contrasts with minimal attention in its Petition for Rulemaking, at 31-32 (July 7, 2011).

The STB should not follow the Canadian experience as a guide to impose that system upon the United States, its carriers, shippers, employees, or communities. The Canadian rail business is conducted predominantly in a narrow east-west band, unlike the United States with its large north-south traffic. Agricultural commodities dominate Canadian traffic. Canada has about only 10 percent the population of the United States. The Canadian "interswitching" arrangement, in effect for over a century (NITL, Ex. 2 at 6) was not designed for competition between its two major carriers--one Government owned; rather, as NITL recognizes (NITL Pet., at 32), interswitching was aimed at reducing the need for excess capacity, and not to promote competition between its two major rail carriers.

The STB would invite disaster should it follow the Canadian interswitching format. The multitude of U.S. carriers has served to expand yard and interchange capacity to accommodate U.S. growth. The NITL proposal would inevitably lead to the underutilization of certain facilities and the impossible congestion at other facilities. In its initial comments, UTU-NY observed the

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<sup>3/</sup> Considerable reliance upon Canadian legislation is accorded throughout by Highroad Consulting, Ltd./Diversified CPC International, Inc.; ARC, et al., at 11; ACC, at 4 & Atta. A; USDA, at 5, 8, 19-20.

NITL proposal appears motivated primarily by rail rate concerns, rather than with any inadequacy of railroad service. UTU-NY at 4 (Mar. 1, 2013). Review of the comments confirms our initial reaction.

Finally, we note that major U.S. shippers do not favor the Canadian proposal at this time, but urge further study (NGFA, et al. at 19). See also: Chlorine Institute; Olin Corporation. The NITL proposal is a "novel and untested switching remedy..." (Entergy Arkansas, Inc., et al., at 2).

2. Cost Considerations. Many of the submissions contain comments on the proper methods to estimate R/VC for various movements, e.g., Glacial Lakes Energy submission. UTU-NY urges the STB not become involved in diversionary tactics surrounding cost estimates. The statutory provisions refer to R/VC in connection with market dominance matters.

3. Employee Consideration & Protection. The various comments confirm the UTU-NY concerns about adverse effects upon railroad employees. UTU-NY at 4 (Mar. 1, 2013). The railroad submissions indicate the prospective disruption of railroad operations, and which would adversely affect the wages, rules and working conditions of their employees.

Respectfully submitted,



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May 30, 2013

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Certificate of Service

I hereby certify I have served a copy of the foregoing upon  
all parties of record by first class mail postage-prepaid.

Washington DC

  
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