

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**Ex Parte No. 711 (Sub-No. 1)**

**RECIPROCAL SWITCHING**

---

**OPENING COMMENTS**

**OF**

**NORTHERN INDIANA PUBLIC SERVICE COMPANY**

---

241883

ENTERED  
Office of Proceedings  
October 26, 2016  
Part of  
Public Record

Sandra L. Brown  
David E. Benz  
THOMPSON HINE LLP  
1919 M Street, N.W., Suite 700  
Washington, DC 20036  
(202) 331-8800

*Counsel for Northern Indiana Public Service  
Company*

October 26, 2016

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**Ex Parte No. 711 (Sub-No. 1)**

**RECIPROCAL SWITCHING**

---

**OPENING COMMENTS**

**OF**

**NORTHERN INDIANA PUBLIC SERVICE COMPANY**

---

Northern Indiana Public Service Company (“NIPSCO”) hereby provides Opening Comments in response to the Notice of Proposed Rulemaking (“NPRM”) issued by the Surface Transportation Board (“Board” or “STB”) in this docket on July 27, 2016.<sup>1</sup> In the NPRM, the Board invited comment on proposed rules that would apply when the Board exercises its authority under 49 U.S.C. § 11102(c) to order reciprocal switching.

NIPSCO’s primary focus in its Opening Comments is on the meaning of “reasonable distance,” an issue on which the Board specifically requested comment. See NPRM at 21. NIPSCO also provides comments on several other issues raised by the Board in the NPRM. NIPSCO believes that revised reciprocal switching rules are sorely needed due to the nearly insurmountable hurdles accompanying use of the current rules, and that expanded access to reciprocal switching is imperative to facilitate rail competition in accord with the national rail transportation policy of 49 U.S.C. § 10101. The overarching issue is that the Board must ensure

---

<sup>1</sup> The Board modified the due dates for comments in a decision served September 1, 2016.

that the rules are fair, reasonable, transparent and predictable and that the Board be committed to timely rulings in any proceeding before the Board.

**I. Identity and Interest of NIPSCO.**

NIPSCO is a subsidiary of NiSource, Inc. and operates as an energy distribution company in northern Indiana. NIPSCO serves approximately 821,000 natural gas customers and 468,000 electric customers, making it the largest natural gas distribution company and the second largest electricity distribution company in Indiana. NIPSCO owns and operates seven coal-fired electric generating units at three different plant locations in northwest Indiana. These seven units typically use between five and seven million tons of coal annually, all of which is delivered via rail to the generating plants. A shortline railroad provides destination rail service at both the Bailly Generating Station and the Michigan City Generation Station; in contrast, the Rollin M. Schahfer Generation Station is served by one Class I railroad. The coal for these seven generating units is sourced from three different mining areas: the Powder River Basin (“PRB”), the Illinois Basin, and Northern Appalachia. NIPSCO applauds the Board for issuing the reciprocal switching rules. Rail service is essential to NIPSCO’s transportation needs and the Board should promote greater competition in the rail industry.

**II. Definition of a “Reasonable Distance” Should Depend on the Circumstances of the Proposed Rail Movement.**

In the NPRM, the Board proposed that parties seeking reciprocal switching must show that, within a “reasonable distance” of the relevant shipper facility, there is (or can be) a working interchange between the Class I carrier serving the facility and the new, competing railroad. NPRM at 20-21. The Board specifically requested comment on how the phrase “reasonable distance” should be defined for purposes of reciprocal switching.

NIPSCO would like to see a predictable number set for the “reasonable distance” under the rules. However, NIPSCO believes that a distance of 30-miles would not be sufficient especially in the context of long, efficient unit train service. Thus, NIPSCO believes that the definition of “reasonable distance” could be different depending upon the circumstances of the proposed rail movement that would be created by a reciprocal switching order. As the Board has implicitly recognized, each rail movement is unique. See, e.g., NPRM at 18 (stating that the operational feasibility of a proposed interchange depends upon the details of that interchange). Thus, the concept of a reasonable distance should not depend on simply measuring a straight-line distance for the switching portion of the movement. There are a other factors that come into play when considering any potential interchange, as well as the effects of that interchange upon the prior and subsequent rail movements. This last point is an important one – what is a “reasonable distance” must depend not just on the details of the interchange itself but also on the impacts of that interchange on the prior and subsequent rail movements.

In defining “reasonable distance,” the Board should consider the following specific factors: (1) type of train service; and (2) length of the switching distance compared to the distance of the new, competing railroad’s line-haul movement.

**A. Type of Train Service.**

When unit train service is being utilized, the distance that is considered “reasonable” should be increased to reflect the efficiencies of such service. Unit trains involve movement of an entire train of cars together without need for blocking or switching out of individual cars. For unit trains, there is no car switching, no delay time in intermediate rail yards, no constructing of car blocks, and no transferring of a single car among several different trains to get it to the destination. Unit train shipments involve movement of an entire train of the same product from a

single origin to a single destination.<sup>2</sup> When unit trains are interchanged from one carrier to another, the transportation often involves use of run-through locomotives, where the same locomotives are used by both carriers. Usage of unit trains greatly simplifies not just the on-the-ground rail operations of the unit train itself, but also numerous other tasks related to rail operations, scheduling, and management.

Unit trains typically operate as part of a continuous cycling movement from origin-to-destination-to-origin repeatedly, thereby increasing the efficiencies even more. Continuously cycling unit trains allow for predictable scheduling of crews, track space, locomotive use, and all the other elements of railroad service. Due to this repetition and predictability, it should be relatively simple to incorporate reciprocal switching in a continuously cycling unit train movement. As the Board well knows, this type of continuous cycling is often utilized for movement of coal from mine origins to coal consumers or coal terminals.

**B. Extent of Switching Distance Compared to Line-Haul Distance.**

The definition of “reasonable distance” should also accommodate longer distances depending upon the line-haul distance of the competing carrier(s). The entire concept of rail car switching is based on the idea of a short, local movement of a rail car in comparison to the longer, line-haul movement that preceded (or that followed) the switching movement. See, e.g., Midtec Paper Corp. v. Chicago & North Western Transportation Co., 1 ICC2d 362, 365 (1985) (referring to a reciprocal switching movement as “usually short” and “local”). Of course, the concept of a “short” movement necessarily depends upon comparison with something else that is

---

<sup>2</sup> See, e.g., Potomac Electric Power Co. v. United States, 584 F.2d 1058, 1061 (D.C. Cir. 1978) (“Unit-train service is a system in which cars and locomotives are joined for an uninterrupted, round trip, shuttle-type service, and is regarded as an efficient method of transporting coal in large volumes.”) (citation omitted).

noticeably longer. That “something else” is the line-haul movement that preceded (or followed) the switching movement.

In other words, the concept of switching inherently depends upon comparing the switching distance to the line-haul distance. Therefore, when the new, competing carrier has an especially long movement, the definition of a reasonable switching distance should be similarly increased. NIPSCO proposes that, at least for unit train movements, any proposed interchange location is a “reasonable distance” from a relevant facility if the switching distance is no more than 10% of the line-haul distance that would be utilized by the new, competing railroad(s). For example, for a long a continuously cycling unit train movement from the PRB of 1100 miles, the reasonable distance would be up to 110 miles, or 10%. For a long a continuously cycling unit train movement from the Illinois Basin with an example of a 350 mile movement, the reasonable distance would be up to 35 miles, or 10%

### **III. Predictability, Non-Class I Carriers, Workable Interchanges and Access Pricing**

As stated at the beginning of these comments, the most important issue for the Board to undertake is to ensure that the reciprocal switching regulations are fair, reasonable, transparent and predictable. In addition, the Board must be committed to establishing timeframes and issuing timely rulings in any proceeding before the Board. In addition, NIPSCO provides an overview of its position regarding several other issues raised by the Board in its request for comments on the NPRM.

#### **A. Non-Class I Carriers**

The Board should not categorially exclude non-Class I carriers from the reciprocal switching regulations. The Board’s predecessor appropriately did not exempt smaller carriers from the prior rules in Intramodal Rail Competition, 1 I.C.C.2d 822 at 835-36 (1985), aff’d sub

nom Balt. Gas & Elec. v .United States, 817 F.2d 108 (D.C. Cir. 1987). The fact that there are fewer Class I carriers today provides even greater reason to not exempt smaller carriers from the regulations as either an incumbent or competing carrier. Issues, if any, regarding the size of the carrier can appropriately be addressed in the individual proceeding at the Board.

**B. Working versus Workable Interchange**

NIPSCO supports a broader definition of working interchange than proposed by the Board that is more akin to the definition proposed by the National Industrial Transportation League. The Board's regulations should allow for a party to establish a workable interchange which may include an interchange that is not currently engaged in switching operations. If there is any one-time infrastructure or construction needed to support the switching operation, the Board should permit that to be part of the consideration and allow a shipper or alternative railroad to decide whether it would be willing to pay for infrastructure improvements deemed necessary for interchange.

**C. Access Pricing**

The Board's proposal for access pricing would permit the carriers involved to establish the compensation for the reciprocal switching.<sup>3</sup> The Board should make clear that any price set between the railroads is challengeable by the shipper. The Board should also limit the time period in which the carriers can establish the compensation before the shipper or alternative carrier seeks relief from the Board. In addition, the methodology set by the STB for access pricing should be the same regardless of the party requesting the access and should result in a reasonable and useable access price that does not include costs such as loss contribution or

---

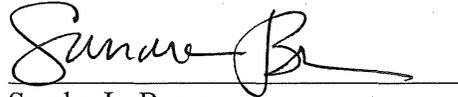
<sup>3</sup> This position is supported by the Board's citation to 49 U.S.C. § 11102(c)(1) which permits the carriers to establish compensation and the Board's statement that the two alternative approaches would apply "in the event that the Board is called upon to establish compensation." NPRM at 24-25.

opportunity costs. These types of costs are not appropriate in light of the barriers to entry in the rail market and the significant consolidation the rail industry has undertaken. Including such costs in the access pricing would allow the incumbent carrier to retain its market power and monopoly profits which is an antithesis to the reciprocal switching regulations.

**IV. Conclusion.**

For the foregoing reasons, NIPSCO respectfully requests that the Board revise the proposed reciprocal switching to ensure that the rules are fair, reasonable, transparent, predictable and timely and find that any determination of whether the distance from the interchange to the shipper facility is “reasonable” is decided based on the circumstances of the proposed rail movement, including the factors described above.

Respectfully submitted,



Sandra L. Brown

David E. Benz

THOMPSON HINE LLP

1919 M St. N.W., Suite 700

Washington, DC 20036

phone: (202) 331-8800

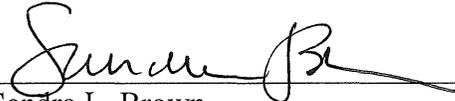
fax: (202) 331-8330

*Counsel for Northern Indiana Public  
Service Company*

October 26, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that on this 26th day of October 2016, I served a copy of the foregoing upon all parties of record via U.S. first-class mail, postage prepaid.

  
Sandra L. Brown