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SURFACE TRANSPORTATION BOARD
Docket No. EP 711
PETITION FOR RULEMAKING TO ADOPT REVISED
COMPETITIVE SWITCHING RULES

Summary of Issues and Comments by Indorama[1]

As noted in prior Surface Transportation Board (STB) decisions in Ex Parte 711, the Surface Transportation Board seeks empirical evidence to evaluate the impact of the NITL Proposal to Adopt Competitive Switching Rules. This summary was prepared by the Tom O'Connor Group at the request of Indorama and outlines testimony Mr. Phillip Rine plans to present at hearings scheduled for October 22 in Ex Parte 711. The Tom O'Connor Group is a participant in this proceeding on behalf of other clients and has been granted access to the STB Waybill Sample for use in Ex Parte 711. At the request of Indorama and its proposed witness, Mr. Rine, the Tom O'Connor Group separately submitted Mr. Rine's notice of intent to participate on behalf of the following Indorama companies:

- Indorama Ventures EO & Glycols, Inc. based in Bayport, TX ,
- StarPet, Inc. based in Asheboro, NC,
- AlphaPet, Inc. based in Decatur, AL,
- Auriga Polymers Inc. based in Charlotte, NC and Forster, Greer and Spartanburg, SC

In summary: Indorama will present the following points:

- **The need for revised competitive switching rules is widely recognized.**

NITL filed its petition almost two years ago, following hearings held at the conclusion of the EP 705 docket on competition in the industry. In its January 11, 2011 STB decision instituting EP 705 - the Board stated "… it is time for the Board to consider the issues of competition and access further." The record in EP 705 amply shows that existing regulatory rules have only partially achieved the purpose of the Staggers Act. For many shippers in a wide range of industries, some of whom are captive shippers; access to competition has been reduced or eliminated. Indorama intends to show that Competitive Switching is advisable; it meets a need and can be accomplished with minimal adverse effects.

- **Many parties noted and Indorama strongly supports the position that the revised Competitive switching should not block access to rate reasonableness remedies**

When the competitive switching rules are revised, they must clearly provide that where an otherwise captive shipper utilizes the revised rules to obtain additional rates from a competing railroad, the existence of those rates shall not be considered as "effective competition"

- **Railroads sometimes have shown tendencies to serve their own interests to the diminishment of "captive" shipper interests and the public interest**

[1] This summarizes key points in the comments filed earlier.

Examples of favoring railroad interests over "captive" shipper interests and the public interest include excessive rates and charges, paper barriers, over-recovering fuel surcharges, restricted routing and other techniques[2] that impede access to more reasonable rates.

Indorama management's experience spans the time period including passage and implementation of the Staggers Act. We have observed often that as competitive alternatives decrease, rates increase. The proposed revised competitive switching rules can serve to mitigate some of the adverse effects of this loss of access to competitive alternatives.

Indorama operates extensively in both the US and Canada. In our view the Canadian competitive switching process operates effectively. It provides major benefits and has not resulted in significant adverse effects.

- **The record in Ex Parte 711 shows that the potential impact on railroad revenues and traffic volumes would be relatively small. USDA and US DOT each independently found that the impact on railroad revenues and traffic volumes would be relatively small.**

Analyses entered in evidence indicate that while 37 percent of CN and CP traffic was <u>eligible</u> for interswitching in 2011 less than 4 percent of Canadian traffic is interswitched annually. This also indicates that the proposed Competitive Switching will have a minor impact on railroad revenues and volume.

Indorama expects that the costs related to Interswitching will be limited in scope and may be offset by additional revenues. The remaining net costs, if any, can be shared with the shippers involved. Indorama is open to the idea of sharing the costs of gaining access to competitive rail switching.

- **Indorama supports the NITL proposal**

Indorama supports the NITL proposal, which will help remedy several issues centering on access to competition while recognizing and accommodating the ongoing need for railroads to maintain adequate financial strength and continue to build efficiency and productivity.

- **A reasonable Access Price can be developed for use in competitive switching.**

Indorama supports the use of a mutually agreed trackage rights fee or haulage rights fee for covering the costs associated with reaching the competitive switching carrier. Both trackage rights fees and haulage rights fees are well-established concepts in the rail industry.[3] If the parties in a given switching access situation cannot agree on such fees, we recommend that the Board prescribe a reasonable access fee.

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[2] See for example the EP 711 filing by Alliance for Railroad Competition - Reply Comments 5/30/13

[3] Trackage rights are agreements whereby a railroad company secures the right to run its trains on tracks owned by another railroad company. Generally speaking, with trackage rights railroad A allows railroad B the authority to operate over railroad A's tracks using railroad B 's locomotive power and crews. Haulage rights are more restrictive - usually railroad A agrees to handle railroad B's traffic at an agreed upon per car or per mile rate, utilizing railroad A's crews. Locomotive power for use in haulage rights is also negotiated and could be provided by either railroad A or B depending on the specific agreement.

Commodities Analyzed

In the Indorama testimony the focus is on two principal commodities transported by Indorama in North America. These commodities are: PET and MEG. Tom O'Connor Group, LLC will analyze the 2011 Board's Confidential Waybill file made available for use in this proceeding. Moreover the Tom O'Connor Group has analyzed and will also rely on analyses of Indorama data. Indorama will present charts showing aggregate summaries of PET and MEG, the two major Indorama commodities. The data will be drawn in part from the Board's 2011 waybill data. These data are germane to determining the reasonableness of the rates charged or proposed by rail carriers serving Indorama. Indorama previously requested The Tom O'Connor Group to review and bench mark the level of Indorama rail rates. The Tom O'Connor Group draws on its work for Indorama which analyzed rail rates for inbound movements of MEG and outbound shipments of PET. The methodology we used to calculate variable costs follows the procedures used in the Board's rate reasonableness proceedings[4].

We find that the proposed 240 percent R/VC is a reasonable guideline. The Tom O'Connor Group also reviewed the STB 2011 STB stratification report which also reflects URCS costs. Those empirical results support the use of 240 percent R/VC as indicating highly remunerative traffic for the railroad(s) involved. Using 240 percent as an indicator of highly profitable traffic is a reasonable standard that satisfactorily addresses market dominance issues as a guideline to rate reasonableness. The 240% R/VC threshold used in conjunction with the presence of a workable interchange within about 30 miles produces a reasonable screen for determining whether to allow competitive switching access**.** Based on its review The Tom O'Connor Group found that most of the Indorama shipment lanes analyzed had access to a competing railroad switch provider within about 30 miles.

Findings and Conclusions

This analysis of Indorama data found that many of the Indorama lanes produced an R/VC greater than or equal to 240 percent. These results support the need for the pro-competitive benefits of the NITL proposal. Our analyses allay concerns, which may be voiced by some parties that the NITL proposal could cause dislocations in the markets to which it would apply. The relatively high R/VC results indicate that with competitive switching a competing railroad may secure some additional rail business at rates which are still highly profitable. The incumbent railroad would also have the option of retaining the business while remaining highly profitable. Practical experience suggests that the incumbent railroad would likely retain the business in many, if not most, cases. This indicates that while shippers may achieve modest gains there would be little adverse impact on other shippers. Our conclusion is that the NITL proposal will have beneficial effects in PET and MEG markets without leading to significant adverse effects on other shippers or the rail system as a whole. The points outlined in this summary support implementation of the NITL proposal and Indorama recommends that the Board do so.

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[4] As outlined in 49 U.S.C. § 10707(d)(1)(B); Ex Parte 657 (Sub-No.1), *Major Issues in Rail Rate Cases* (Served October 30, 2006) at 60 ("*Major Issues*); and STB Ex Parte 646, *Simplified Standards for Rail Rate Cases* (served September 5, 2007) at 26 ("*Simplified Standards*").