

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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Ex Parte No. 711

**PETITION FOR RULEMAKING TO ADOPT REVISED COMPETITIVE
SWITCHING RULES**

**Comments of
The Chlorine Institute, Inc.**

The Chlorine Institute, Inc. (the “Institute”) hereby submits these comments in response to the Board’s Notice of commencement of proceeding and request for comments on July 31, 2012 (the “July 31 Notice”). The Institute is pleased that the Board is open to considering rail dependent shipper proposals to help improve the state of rail competition, as evidenced in this Ex Parte 711 proceeding that was initiated to collect more information regarding the National Industrial Transportation League’s (the “NITL”) proposal related to competitive switching, as well as other proceedings including Ex Parte 705, Ex Parte 714 and Ex Parte 715. While it is encouraging to see that the Board is interested in creating a more competitive rail environment, the Institute is concerned about the non-integrated approach the Board is taking.

The Institute agrees with the intent behind the NITL’s proposal and that the rules currently applicable to reciprocal switching should be revised, but that action alone will not guarantee that all shippers across the board will have access to effective competition. As proposed, a Class I rail carrier would be required to enter into a competitive switching agreement if the criteria proposed in the NITL’s petition is met, or when certain

exceptions are made on a case-by-case basis, but it would not require or necessarily impel the carrier to provide a reasonable and competitive rate. The Institute does not fully share in the apparent belief that by requiring the railroads to enter into a switching agreement, which essentially still merely invites the major railroads to compete with one another, that they will actually depart from their current non-competitive conduct and begin to compete for market share based on reduced price and improved service.

In its July 31 Notice, the Board claims that:

“This proposal has the potential to promote more rail-to-rail competition and reduce the agency’s role in regulating the reasonableness of transportation rates. It could permit the agency to rely on competitive market forces to discipline railroad pricing from origin to destination, and regulate only the access price for the first (or last) 30 miles.”

It is troubling to think the Board feels it might be able to simply rely on presumed competitive market forces to discipline railroad pricing for general service rates and only regulate the access prices within the 30-mile interchange point radii, and with that, believes it would have a reduced role in regulating the reasonableness of rates. Potential revisions prompted by Ex Parte 711 will not be an end-all solution, and the Board cannot believe it might no longer need to address and regulate rate reasonableness. Although the number of rate disputes may reduce if revisions to the competitive switching rules take place, the potential for rate challenges will likely still remain and the Board’s role in regulating reasonableness in these challenges will continue to be a crucial factor to ensure fairness in the rail transportation market.

The Institute believes that a more holistic approach to rail competition issues is indicated both by the record in Ex Parte 705 and by the conduct of the major railroads over the past decade. The Institute suggests that the Board should examine the record in Ex Parte 711 in conjunction with the records in Ex Parte 705, Ex Parte 714 and Ex Parte 715 to determine what actions it might take to require the major railroads to effectively compete with one another rather than merely inviting them to compete. Such actions might involve reopening the three mega mergers of the 1990s to impose additional competitive conditions. The Institute stands ready to assist the Board in any such efforts.

Respectfully submitted,

/s/ Robyn S. Kinsley
Director, Transportation & Incident Analysis
The Chlorine Institute
1300 Wilson Blvd
Suite 525
Arlington, VA 22209
Telephone: (703) 894-4123
Email: rkinsley@cl2.com

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