BEFORE THE
SURFACE TRANSPORTATION BOARD

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PETITION FOR RULEMAKING TO
ADOPT REVISED COMPETITIVE SWITCHING RULES

COMMENTS OF

DIVERSIFIED CPC INTERNATIONAL, INC.

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March 1, 2013

My name is Sandra J. Dearden. I am President and Executive Consultant for Highroad Consulting, Ltd. (Highroad). I am representing Diversified CPC International, Inc. (Diversified CPC). Highroad has managed rail transportation for Diversified CPC for fifteen (15) years.

Diversified CPC is a manufacturer of blowing agents for the plastic foam industry, propellants for consumer aerosol products, and various specialty gases, headquartered in Channahon, IL. Diversified CPC has six manufacturing and distribution facilities in North America. Diversified CPC relies on Class I railroads for inbound shipments of raw materials and to deliver products to customers.

Diversified CPC appreciates the opportunity to participate in this important proceeding. Rail transportation is critical to our operation, so we believe it is imperative to address the need to improve competition in the rail industry, and to present the views of a small shipper so potential changes in competitive switching rules are practical and access to competitive switching will be an affordable and practical option for Diversified CPC and other small shippers.

BACKGROUND

The NITL proposal provides that competitive switching by a Class I railroad would be mandatory if four conditions are met:

(1) A shipper or group of shippers is served by a single railroad.

(2) There is no effective intermodal or intramodal competition (the railroad handles 75% or more of freight volumes) and the RVC on the rail traffic is 240% or higher.

(3) There is or can be a working interchange within a reasonable distance (30 miles) of the shipper's facility.

(4) Switching is safe and feasible with no adverse effect on existing service.

In the Board's decision to initiate this proceeding, they posed some broad questions regarding the impact this will have on industry. The purpose of this document is to answer some of those questions as they relate to Diversified CPC's business, and to offer some suggestions to establish procedures that will be simple so competitive switching is an option for small *and* large shippers.

This statement will focus on the following questions posed by the Board:

1. Impact on rates and service for shippers that would qualify under the competitive switching proposal.
2. Potential impact on rates and service for captive shippers that would not qualify under this proposal.
3. Impact on the railroad industry, including its financial condition and network efficiencies or inefficiencies, including the potential for increased traffic.
4. An access pricing proposal.
5. What would happen if STB modified NITL's proposal, such as changing the 30-mile limit, or the RVC used for conclusive presumption in favor of competitive access relief, or using some other method (vs. the 240% RVC) such as a carrier's 4-year average RSAM benchmark?

Potential Impact on Rates and Service

1. For shippers that would qualify under the competitive switching proposal –

Diversified CPC has four production plants and two distribution terminals; all are rail served:

1. Channahon, IL (rail station Lorenzo, IL), Diversified CPC headquarters, local on Burlington Northern Santa Fe (BNSF).

2. Sparta, NJ, served by New York, Susquehanna and Western Railway (NYSW). Sparta is in the Conrail "shared asset" area, so NYSW connects with CSX Transportation (CSXT) and Norfolk Southern (NS), which affords competitive options unless origins or destinations for shipments to or from Sparta are local on CSXT or NS.
3. Petal, MS (rail station, Dragon, MS), local on NS.
4. Anaheim, CA, local on Union Pacific (UP).
5. Miami, FL, a distribution facility for local deliveries and for shipments to customers in South America and in the Caribbean, local on CSXT.
6. Ajax, ON, a distribution facility operated by a Canadian business partner, served by Canadian National; CP has access through Canadian inter-switching.

All of Diversified CPC's facilities that are served by a single railroad could access another carrier with an interchange within the proposed 30-mile limit:

- Lorenzo, IL – UP has a potential interchange 4.4 miles from the plant and CN is constructing an interchange at the Joliet yard, 16.5 miles from the plant.
- Dragon, MS – NS could interchange with CN at Hattiesburg, MS, 4.4 miles from the plant.
- Anaheim, CA – UP could interchange the cars to BNSF at South Anaheim, 3.5 miles from the plant.
- Miami, FL – CSXT could interchange the cars to FEC one (1) mile from the distribution terminal.

Summarized below are some examples of the impact competition has on Diversified CPC's rates. The summary includes RVC's and rates per ton-mile for the moves selected for this analysis. Distances can impact on RVC's and typically impact on rates per ton-mile, so both are be considered when analyzing rates. Cost studies were performed on the Uniform Rail Cost (URCS) model:

Example #1 -

(A) from Ajax, ON which has access to a second carrier through inter-switching; compared to (B) a captive move of similar distance.

Move	**Miles**	**RVC**	**PTM**
A	553.5	171%	$0.0506
B	507.2	200%	$0.1080

Example # 2 -

(C) Move from a plant served by one railroad to a customer that can be served by two railroads; compared to two moves (D) and (E) from origins to destinations that are captive to single railroads.

Move	**Miles**	**RVC**	**PTM**
C	183.2	253%	$0.2370
D	117.6	202%	$0.2713
E	187.5	272%	$0.2000

Example #3 -

(F) move to our Sparta plant that can be handled by CSXT or NS; compared to (G) a move to Sparta that is captive to one railroad.

Move	**Miles**	**RVC**	**PTM**
F	988.5	202%	$0.0924
G	592.5	297%	$0.1411

2. For captive rail shippers that would not qualify under this proposal –

The Board is asking if we should be concerned that carrier(s) might charge remaining captive customers more to make up for lost traffic.

First of all, we should not necessarily assume that the railroads will lose traffic and revenues as a result of new competitive switching rules. Canadian carriers have continued to increase business under regulated inter-switching.[1] Also, as detailed later in this statement, one of Diversified CPC's plants is not shipping any rail cars because of the high rates. Business from that plant is moving truck or from alternative origins. This is business that could be, and should be diverted to rail from this plant.

My employment with the railroads spanned more than twenty-five (25) years. During that time when I was responsible for marketing and business development for Class I railroads, I cannot remember a time when we had a strategy meeting to shift revenue responsibility to shippers left behind. Instead, we were focused on increasing business, not penalizing customers because they are captive and which could have resulted in lost business. I do not believe that this should be a valid concern. I know the railroads can be tough at times, but it has been our experience that railroad officials have integrity, they contend they are not pricing based on costs; instead they are pricing to the market, so I doubt that this should be a concern.

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[1] CN and CP Annual Reports and 4th quarter financial statements

Potential Impact on the Rail Industry

Diversified CPC has experience with competitive switching at Ajax, ON, which is served by CN, but CP has access through Canadian inter-switching. Regulated inter-switching in Canada has been in effect more than twenty (20) years, and has proven to be very successful.

We confirmed that inter-switching did not have a negative impact on rail operations and service in Canada[2]. In fact, productivity has continued to increase, operating ratios have declined, and the railroads have continued to invest capital for equipment and infrastructure, to manage growth.

Capital expenditure programs announced by the railroads for the most recent five years are shown below:

Year	CN	CP
2013	$1.9 billion	$1.1 billion
2012	$1.75 billion	$1.2 billion
2011	$1.7 billion	$1.04 billion
2010	$1.72 billion	$726 million
2009	$1.48 billion	$703 million

Diversified CPC also has experience with service from and to the distribution terminal at Ajax, ON, and to Sparta, NJ which can be accessed by two carriers (CSXT and NS), and service on those moves has been consistent and the only delays have been weather related.

[2] Note Dearden/Highroad statement into this proceeding pp.7

There is no reason to believe that railroads in the United States will not perform at the same level as the Canadian railroads, and that increased access to reciprocal switching will have a negative impact on rail operations and service in the United States.

The Board's Questions re Potential Changes to the NITL Proposal

Impact if the 30-mile limit is changed – All of Diversified CPC's facilities that are served by a single carrier could access a second carrier with an interchange within 17 miles of the plant or terminal.

The proposed RVC of 240% for conclusive presumption or using some other method such as the average RSAM benchmark – If the Board elects to include in the new rules and procedures calculation of a regulatory benchmark, the benchmark should be fair to all parties. It is accepted that URCS needs to be updated or replaced as the model produces costs that are not accurate and the costs are over-stated[3]; however, RSAM could produce even higher benchmarks. Therefore, if those are the only two options, we would be in favor of a RVC benchmark, but the regulatory threshold should be consistent with that in place for other STB proceedings, i.e., 180%.

The Canadian Model

For numerous reasons, we request that the Board consider regulated inter-switching in Canada as a model for similar rules and procedures to be established in the United States. The Canadian model has been successful, shippers have

[3] Dearden testimony, STB Finance Docket 36063, *Michigan Central Railway, LLC – Acquisition and Operation Exemption – Lines of Norfolk Southern Railway Company*

benefitted from increased competition, it has not impacted on rail service, and the Canadian railroads have continued to improve the efficiency of operations which is reflected in lower operating ratios. Why should we feel compelled to conceive totally new rules and procedures when a working model is already developed and it has passed the test of time?

We commend the Board for initiating proceedings to investigate rail competition and to explore potential ways to address the basic problem that the business landscape of the U.S. rail system has changed dramatically since the Staggers Rail Act was passed by Congress, and we have realized a dramatic loss of rail-to-rail competition. This proceeding presents an opportunity to open dialogue between the railroads and the rail customers, and to respond to the Board's basic question, i.e., how should we adjust and what is needed to improve competition?

The Canadian model simply sets a standard to allow competitive access to establish competition and a pricing schedule for switching rates (the location is within 30 kilometers of a second carrier). The Canadian model includes prescribed inter-switching rates based on four Inter-Switching Distance Zones, for blocks of less than 60 cars, and for blocks of 60 or more cars. It is straight forward and easy to understand and implement. Rail customers are not required to absorb high litigation costs; procedures do not require proof of market dominance or proof that the rates exceed a designated RVC level.

If the Board's objective is simply to improve competition, shippers should not be required to prove market dominance or prove that rates exceed a regulatory benchmark.

One of our plants that is currently served by a single rail carrier, shipped only one rail car in 2011 – the remainder of the outbound shipments moved via truck. This plant was established to serve customers in the region but rail rates have been so high that shipments moved by truck and shipments to one high volume receiver moved rail from another Diversified CPC plant that is 835 miles more distant.

In 2012, we finally convinced the railroad to work with us on the rates so rail can become a viable option. However, this is an example of why rail customers should not be required to pass a market dominance test. While Diversified CPC was able to develop some short-term plans to ship by truck and alternative sourcing, the long term viability of the plant was in jeopardy if the rail rates were not addressed. Under this type of scenario, access to a second carrier could be a practical solution – the railroads would benefit from increased business, and Diversified CPC would improve the efficiency of its supply chain and head off the potential loss of a plant and jobs in a rural area.

Any changes in the competitive switching rules and procedures developed by the STB should be simple and they should address the need to improve competition in the rail industry. From a small shipper's perspective, if the process is simple and straight forward like the Canadian model, access to competition will be available and affordable for large *and* small rail customers.

While it is likely a table of rates for competitive switching in the U.S. should be different than the table of rates used in Canada, the basic concept is good and a similar table could be developed for competitive switching in the U.S.

Summary

There is a need to address competition in the rail industry, and competitive switching has proved to be a good solution that benefits all parties.

Of the lanes used in our analysis, RVC's for shipments to and/or from stations served by a single railroad were 7.5% - 47% higher, and rates per ton-mile were 14% - 113% higher than comparable moves with competitive access. The experience with regulated inter-switching in Canada indicates that competitive switching is a practical solution to inadequate competition in the United States.

Further, inter-switching in Canada has not had a negative impact on rail operations and service in Canada. In fact, productivity has continued to increase, operating ratios have declined, and the railroads have continued to invest capital for equipment and infrastructure, to manage growth.

Assuming the objective is to address the lack of competition in the rail industry and simply to establish competition, we request that the Board consider regulated inter-switching in Canada as a model for similar rules and procedures to be established in the United States. Rail customers should not be required to prove market dominance or prove rates exceed some regulatory benchmark based on designated RVC's, RSAM, or other calculation. The new rules should take into consideration the impact rail rates can have on the future of manufacturing operations and jobs in the United States. The objective should be to establish procedures that do not unnecessarily inflate costs for consultants and attorneys, so competitive switching will be a practical option for large *and* small shippers.

If the Board elects to include in the new rules and procedures calculation of a regulatory benchmark, the benchmark should be fair to all parties. It is accepted that URCS needs to be updated or replaced as it produces costs that are not accurate and the costs are over-stated; however, RSAM could produce even higher benchmarks.

Therefore, if those are the only two options, we would be in favor of a RVC benchmark, and the regulatory threshold should be consistent with that in place for other STB proceedings, i.e., 180%.

Respectfully submitted,

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