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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

**COMMENTS OF
DIVERSIFIED CPC INTERNATIONAL, INC.**

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October 26, 2016

I. Background

My name is William F. Frauenhelm III (Bill), Vice President - Operations for Diversified CPC International, Inc. (Diversified CPC). I earned my B.S. in Petroleum and Natural Gas Engineering at Pennsylvania State University, and I have been with Diversified CPC for more than thirty years. Diversified CPC filed comments in Ex Parte No. 711.

Diversified CPC International is a global leader in the production and manufacturing of the highest quality aerosol propellants, specialty gases, alternative fuels, NGL refrigerants, physical foam blowing agents, and related products.

Diversified CPC has four manufacturing plants in California, Illinois, Mississippi, and New Jersey, and advanced distribution facilities in Miami, Florida and Ajax, ON. All are rail-served. Our headquarter plant at Channahon, IL (rail station Lorenzo, IL) is served by BNSF Railway; the plant in Anaheim, CA is served by Union Pacific Railroad; and the plant at Petal, MS (rail station, Dragon, MS) is served by Norfolk Southern Railroad (NS). Diversified CPC's plant at Sparta, NJ is served by the New York & Susquehanna Railroad which connects with NS and CSX Transportation.

Diversified CPC's hydrocarbon propellant division began in 1964 with a single manufacturing facility in Blackwell, Oklahoma, and a distribution center in Frankfort, Illinois. In 1976, the facility in Anaheim, California, was purchased and modified to handle the manufacture of hydrocarbon products.

Our corporate headquarters and flagship manufacturing facility were built in Channahon, Illinois in 1982. In 1988, the Channahon, Illinois facility completed

extensive modernization, centering on the installation of an exclusive hydrogenation process and on-line quality control sampling devices. Equipment to expand the company's raw material base, additional storage tanks, vapor recovery unit, and In-line blending capabilities were also added.

Diversified CPC has Invested more than \$2.9 million at its rail-served plants for infrastructure improvements required to maintain and increase rail shipments. Diversified CPC cannot pass infrastructure costs through to our customers. These projects included:

- Rail infrastructure improvements and storage at the Petal, MS (Dragon, MS) plant.
- Installation of additional rail car unloading stations, rail risers, and bulk storage tanks at our Anaheim, CA; Miami, FL; and Sparta, NJ facilities.
- At the Channahon, IL plant we installed additional tank car loading and unloading stations, and bulk storage for a new product blend shipped exclusively by rail. The plant now has 16 tank car loading and unloading stations and can handle up to 24 cars on its four sidings, effectively doubling the loading and unloading facilities of the original plant design.
- In 2016, Diversified CPC is Investing \$0.7 million at the Channahon plant to upgrade tank car loading and unloading stations and associated piping that have been in service since 1982.

In 2009, Diversified CPC continued its expansion with the construction of additional fractionation capabilities with the addition of three more distillation towers designed to produce Ultra High Purity Hydrocarbons (99.99%).

Rail transportation is critical to our operation and our ability to serve our customers which are name brand consumer products companies, and it has become evident in recent years that there is a need to improve competition in the rail industry.

In the petition to the Board for a rulemaking proceeding, NITL proposed new rules under which competitive switching would be imposed if four criteria were met¹:

- (1) A shipper or group of shippers is served by a single railroad;
- (2) There is no effective intermodal or intra-modal competition for which competitive switching is sought;
- (3) There is or can be a "*working interchange*" within a "*reasonable distance*" of the shipper's facility;
- (4) Switching is safe and feasible with no adverse effect on existing service.

NITL's proposal included some conclusive presumptions, including two presumptions with respect to the requirement that no effective competition exists, i.e., the rate for the movement for which switching is sought has a revenue-to-variable cost (RVC) ratio of 240% or more, or where the incumbent carrier serving the shipper's facility for which switching is sought has handled 75% or more of the transported volumes of the movements at issue for the prior 12-month period.

In the comments filed in Ex Parte 711 on our behalf by our Consultant, Highroad Consulting, Ltd., it was our position that if the Board elects to include in the new rules and procedures a calculation for a regulatory benchmark, the benchmark should be fair to all parties and the regulatory threshold should be consistent with that in place for other STB proceedings, i.e., 180%. Also, it was our recommendation that the Board adopt a streamlined process that will not unnecessarily inflate costs

¹ Booth, Moreno, DIMichael, "Docket No. RP 711, Petition for Rulemaking to Adopt Revised Competitive Switching Rules", NITL (2011), 67

of consultants and attorneys so competitive switching is a practical option for large and small shippers.

While granting NITL's proposal to initiate a rulemaking proceeding, the Board acknowledged the need to make reciprocal switching a practical solution for all shippers vs. a sub-set of shippers², and the Board is proposing new reciprocal switching regulations using a two-pronged approach under which switching arrangements will be established if such arrangement is either practicable and in the public interest, or necessary to provide competitive rail service. The Board also submitted that imposition of reciprocal switching on a case-by-case basis will establish a greater degree of precision when mandating reciprocal switching.

We strongly support the Board's decision to adopt new competitive switching rules. However, I do have some questions and concerns. In this statement I will emphasize the need for streamlined procedures so access to competitive switching is a practical solution for all shippers, and I will provide comments regarding other factors for the Board to consider when confirming the process.

II. Practicable and in the Public Interest Prong

This first prong provides that a party could obtain a reciprocal switching prescription by showing the proposed switching is practicable and in the public interest. The Board proposed three criteria that shippers must satisfy to demonstrate that switching is practicable and in the public interest: (1) that the facility of the shipper(s) and/or receiver(s) for whom such switching is sought are served by Class

² Surface Transportation Board, "Docket No. EP 711 (Sub No. 1) Petition for Rulemaking to Adopt Revised Competitive Switching Rules", STB (2016) 13

I rail carrier(s); (2) that there is or can be a working interchange between the Class I carrier serving the party seeking switching and another Class I rail carrier within a reasonable distance of the facilities of the party seeking switching; and (3) that the potential benefits from the proposed switching arrangement outweigh the potential detriments.³

We agree with the Board's proposed standards set forth for this prong. An example of a potential scenario includes giving shippers the opportunity to reach new customers and markets at destinations served by the second carrier. Since this would be new business there would not be existing rates to use to calculate the RVC's. It seems obvious that opening new markets to shippers would serve the public interest, as you would not only be improving competition in the rail industry but other industries as well.

Also, one of Diversified CPC's plants that is served by a single Class I carrier, receives some of its shipments of raw materials by truck, but the preponderance of those shipments are received by rail. On the other hand until very recently, the rail rates proposed from that plant have not been competitive so our market reach from that plant has been limited to customers that are regional and truck served. It is a double edged sword - since we are trucking to our customers from that plant, we would not be able to claim market dominance as required in the Competitive Rail Service prong, yet we would still not have competitive rail rates needed to expand our market reach.

³ Ibid.

Again, we support the Board's proposal to address these types of situations by allowing shippers to demonstrate that switching would be in the public interest.

III. Necessary to Provide Competitive Service Prong

Under this second prong a party could obtain a reciprocal switching prescription by showing that the proposed switching is necessary to provide competitive rail service. Again the Board is proposing three criteria that shippers must satisfy: (1) that the facilities of the shipper(s) and/or receiver(s) or whom switching is sought are served by a single Class I rail carrier; (2) intermodal and intra-modal competition is not effective with respect to the movements of the shipper(s) and/or receiver(s) for whom switching is sought; and (3) there is or can be a working interchange between the Class I carrier serving the party seeking switching and another Class I carrier within a reasonable distance of the facilities of the party seeking switching.⁴

Under this Competitive Service prong, the Board proposes to apply the market dominance test to determine if a movement is without effective intermodal or intra-modal competition. Under the quantitative component, if the rail carrier proves that the rate at issue results in an R/VC ratio less than 180%, the Board will find that the rate is subject to effective competition.⁵

We commend the Board for their intentions and this rulemaking proceeding in itself seems to be progressing in the right direction. However, knowing the devil can be in the details, I caution the Board against any rush to judgement as the process

⁴ Surface Transportation Board, "Docket No. EP 711 (Sub No. 1) Petition for Rulemaking to Adopt Revised Competitive Switching Rules", STB (2016) 13 - 14

⁵ Surface Transportation Board, "Docket No. EP 711 (Sub No. 1) Petition for Rulemaking to Adopt Revised Competitive Switching Rules", STB (2016) 16

and standards proposed in the Competitive Rail Service prong could develop into just another type of costly and cumbersome rate case. If so, it is highly unlikely that most shippers, including small shippers like Diversified CPC, will apply for reciprocal switching. Thus, this would be a meaningless exercise.

It is my understanding that the market dominance portion of a rate case alone can be lengthy and costly. The rules to be confirmed in this proceeding require very careful consideration lest this process develop into another category of rate cases. We do not believe that is the Board's intent, but we respectfully submit that the Board should approach the rule changes applicable to the Competitive Rail Service prong with caution.

We encourage the Board not to include market dominance as a consideration to demonstrate the need for competitive switching. However, if the Board is to confirm in the new rules that confirmation of market dominance be included in the assessment, then standards need to be established and there should be limits to shorten the market dominance process. Also, if the market dominance test, which includes a RVC threshold, is performed on a per-lane basis, it is difficult to understand what this will really mean if some lanes stand up to the test and others do not. Under that scenario are we to assume that since this is to be lane specific, a facility would actually not be open to reciprocal switching and what could develop is an administrative nightmare for Traffic Managers and shipping clerks – which lanes are or are not open? Of course, under that scenario, the potential risk is the railroad could increase rates on those lanes that remain captive to make up for lost revenues for those lanes that are diverted to a second carrier.

Finally, since rates change, would shippers need to re-apply for those lanes that previously did not pass the test? It seems to me that what we should be trying to accomplish is to secure a determination that a plant is either open or closed to reciprocal switching.

As stated previously, we submit that decisions to impose reciprocal switching should not be limited by a market dominance test that includes an RVC threshold. Under the proposed rules, a decision for a shipper to access competitive switching would be piece meal and the process would simply emulate a rate case that would not be a practical solution for all shippers.

IV. Definition of Reasonable Distance

We support the Board's proposal to consider reciprocal switching requests on a case-by-case basis. The proposed RVC threshold is consistent with other current proceedings. Also, since the definition of reasonable distance may vary based on markets and geography, the Board's proposal to judge a reasonable distance on a case-by-case basis, will improve the process as decisions will not be judged based on a single number, but on specific market conditions and railroad operations.

Also, the definition of miles should be confirmed. Are the miles to be actual operating miles or practical miles? Railroads have changed operations and routing protocols, and we expect they will continue to do so in the future. Often those changes result in increased miles, but the railroads contend they make those decisions for "operating convenience." Those situations should be part of the Board's consideration when judging "*reasonable distance*" to a "*working interchange*."

Shippers should not be precluded from requesting reciprocal switching because they are not within a set reasonable distance of a working interchange.

While the miles could appear on the surface to be potentially unreasonable, if the actual route of movement is operationally more efficient for the railroad, then judging a longer distance as reasonable may be the better decision. We support the Board's proposal to consider reasonable distance on a case-by-case basis.

V. Summary

In summary, while we were enthused when the Board opened this rulemaking proceeding, and we support the Board's proposal to make decisions to impose reciprocal switching on a case-by-case basis, we are concerned about the proposed procedures set forth in the second prong to access competitive switching. The proposed procedures which include market dominance and RVC determination, could develop into another rate case category and result in costly and lengthy proceedings that would not be a practical solution for some rail shippers.

Also, by making the market dominance and RVC determinations, it is possible that some lanes would pass the market dominance test while others would not, in which case reciprocal switching would only be an option for some commodities and lanes from a single facility which would be confusing and administratively burdensome. A better decision would be to either deem terminals as open or as closed to reciprocal switching.

Finally, Diversified CPC values the relationship we have with the rail carriers that serve our plants and distribution terminals; however, we also recognize that

organizations and policies can change. Rail is important to our operations, but we need to control our costs if we are to continue to grow and maintain business. Therefore, we view our participation in this proceeding as a potential investment in the future so Diversified CPC will have access to reciprocal switching should we need it in future years. We commend the Board for opening this rulemaking proceeding and we appreciate the opportunity to present our views.

Respectfully submitted,

A handwritten signature in black ink, reading "William F. Frauenheim III". The signature is written in a cursive style with a large, stylized initial "W".

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