

BEFORE THE
SURFACE TRANSPORTATION BOARD

234875
ENTERED

Office of Proceedings
September 23, 2013
Part of
Public Record

Ex Parte No. 711

PETITION FOR RULEMAKING TO ADOPT
REVISED COMPETITIVE SWITCHING RULES

NOTICE OF INTENT TO PARTICIPATE

Pursuant to the Board's Decision served on August 12, 2013, The National Industrial Transportation League ("NITL" or "League") hereby notifies the Board of its intent to participate in the public hearing to be held in this proceeding on October 22, 2013. The League intends to have five (5) witnesses appear at the hearing: (1) Mr. Bruce Carlton, President of NITL; (2) Ms. Karyn Booth, General Counsel to NITL and a partner at Thompson Hine LLP; (3) Mr. Nick DiMichael, Counsel to NITL and senior counsel at Thompson Hine LLP; (4) Mr. Jay Roman, President of Escalation Consultants; and (5) Company Witness—To Be Determined. The League will supplement this Notice of Intent as soon as its company witness has been confirmed.

The League's testimony will be based primarily on its written opening and reply comments filed in this proceeding on March 1, 2013 and May 30, 2013, respectively. The League requests 75 minutes to present its testimony to the Board.

A brief summary of the topics to be addressed by the League's witnesses follows.

1. Mr. Bruce Carlton (10 minutes): Mr. Carlton will address the background of the League's Competitive Switching Proposal ("CSP"), as well as the need for increased rail-to-rail competition and the public benefits to be derived from such competition for League members and captive shippers at large.

2. and 3. Ms. Karyn Booth and Mr. Nick DiMichael (35 minutes): Ms. Booth and Mr. DiMichael will address the workings of the League's CSP, as well as the clear legal authority of the Board to initiate a rulemaking on the proposal and to adopt new competitive switching rules which are consistent with the policies and provisions of the governing statute. Ms. Booth and Mr. DiMichael will review the key inquiries established by the Board in this proceeding, the conservative analyses employed by its primary consultant, Mr. Roman, and the findings and conclusions set forth in the League's studies and comments submitted to the Board, including that the implementation of the CSP would inject a reasonable amount of competition into the rail industry without harming the strong financial condition of the Class I railroads or other shippers, and that the CSP would not create operational inefficiencies. Ms. Booth and Mr. DiMichael will also respond to the legal arguments and conclusions set forth in the comments of the AAR and other Class I railroad submissions.

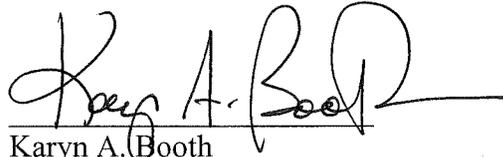
4. Mr. Jay Roman (20 minutes): Mr. Roman will address the technical analyses that he performed using the 2010 Confidential Waybill Sample provided by the Board in order to determine the scope of captive shippers, based on qualifying railroad movements, and the potential impact of the CSP on railroad revenue earned by the four major U.S. Class I railroads. Mr. Roman will explain how his studies applied the key factors and conclusive presumptions contained in the League's CSP, including the 240% Revenue to Variable Cost factor, the 75% market share factor, and the identification of impacted stations that are located within 30 miles of a working interchange, under two scenarios of marketplace competition (i) full competition and (ii) reduced competition to reflect the realities of the current rail market. Mr. Roman will also address the assumed access fees that were applied to determine the estimated CSP revenue impacts. Additionally, Mr. Roman will address the erroneous economic impact analysis

conducted by the AAR expert witnesses, Mssrs. Baranowski and Brown, including without limit, their vastly overstated estimate of impacted carloads.

5. Company Witness (10 minutes) —To Be Determined.

All of the League's witnesses will be pleased to address questions from the Board.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Karyn A. Booth". The signature is written in a cursive style with a long horizontal line extending to the right.

Karyn A. Booth
THOMPSON HINE LLP
1919 M Street, NW
Suite 700
Washington, DC 20036
(202) 331-8800

*Attorney for The National Industrial
Transportation League*

September 23, 2013