

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**SURFACE TRANSPORTATION BOARD
EX PARTE NO. 714**

233532
ENTERED
Office of Proceedings
December 18, 2012
Part of
Public Record

**INFORMATION REQUIRED IN NOTICES AND PETITIONS
CONTAINING INTERCHANGE COMMITMENTS**

**VERIFIED STATEMENT ON BEHALF OF THE RAIL INDUSTRY WORKING
GROUP**

My name is J. Reilly McCarren and I am the Co-Chair of the Rail Industry Working Group ("RIWG"), the body formed to administer the Rail Industry Agreement ("RIA"). This Verified Statement is filed in the captioned proceeding on behalf of the RIWG.¹

The RIWG respectfully submits this Verified Statement concerning the Surface Transportation Board's ("STB") November 1, 2012, Notice of Proposed Rulemaking ("NPR") that would, if the proposed rules are adopted, require railroads to develop and include additional information in notices of in exemptions to acquire through lease or purchase and to operate rail lines subject to interchange commitments ("Exemption Proceedings"). In the NPR, the STB has proposed revisions to the Board's rules at 49 C.F.R. §§ 1121.3(d), 1150.33(h), 1150.43(h) and

¹ In addition to my position as Co-Chair of the RIWG, I am the Chairman of the Arkansas & Missouri Railroad ("A&M"). The A&M was established in 1986 as a Class III railroad operating a 150 mile route between Monett, Missouri and Fort Smith, Arkansas. The home office is located in Springdale, Arkansas with major operations based there and Fort Smith. The company provides freight service to customers along its route and excursion passenger service between Springdale and Van Buren/Fort Smith. A&M interchanges traffic with three Class I railroads: Burlington Northern Santa Fe ("BNSF"), Kansas City Southern ("KCS"), and Union Pacific ("UP"), as well as the Fort Smith Railroad ("FSR"). All of A&M's lines are rated at 286,000 pounds and cleared for double stack rail cars, and main lines feature continuous welded rail. A&M has one leased line on which there is an interchange commitment.

1180.4(g)(4)(the "Proposed Rules"). The STB's goal is "...to ensure that both the agency and other interested parties have sufficient information to judge whether the exemption process is appropriate for a transaction." The RIWG asserts that the STB does not need to alter the rules governing interchange commitments as there is already an adequate remedy to resolve issues that may arise as a result of an interchange commitment regarding new traffic and that remedy is the RIA. Accordingly, the RIWG urges that the STB not adopt the Proposed Rules.

Background of the Rail Industry Agreement and the Rail Industry Working Group

In 1998, the Surface Transportation Board ("STB") instituted a proceeding in Ex Parte No. 575 to address a number of then current rail industry concerns. Those concerns included contractual obligations established when short lines acquired railroad lines from larger, connecting rail carriers. These contractual obligations were also known as "paper barriers." At the same time, the STB urged the railroads to privately and expeditiously resolve these issues.

By the time Ex Parte No. 575 was instituted, negotiations had already begun between the Association of American Railroads ("AAR") and the American Short Line & Regional Railroad Association ("ASLRRA") due to the desire of the railroads to find ways to promote a stronger rail industry and encourage shippers to more frequently use rail. Agreement between the parties was reached in 1998 and all the Class I railroads and virtually all the Class III railroads have subscribed to the RIA. One of the principles of the RIA reads, in part, as follows:

Only legitimate "paper barriers" should be enforceable. Paper barriers are restrictions on interchange imposed by contract at the time of the creation of the Short Line. Legitimate paper barriers are those that are designed as fair payment for the sale or rental value of the line that created the Short Line. Such barriers should not restrict the Short Line's ability to develop New Traffic with another carrier if the selling or leasing Large Railroad cannot or will not participate in the New Traffic...

In 2004, the AAR and ASLRRA signed an amendment to the RIA that made the RIWG a formal part of the RIA and that clarified the definitions of interchange commitments and new business. As noted above, a goal of the RIA was to provide for waivers of the restrictions imposed by interchange commitments in most cases where new railroad business on the line and thereby allow the short line to handle the traffic. The key change in the amendment is an expanded definition of "new business", which the amendment defines to include three situations: (1) traffic to or from newly constructed customer facilities on a short line by a new customer to the short line; (2) traffic to or from an existing facility located on a short line that has been shipped on any mode or modes of transport other than rail for period of 12 consecutive months immediately prior to a request for waiver of the interchange commitment; and (3) traffic to or from an existing facility located on a short line if the facility has not shipped for a period of 24 consecutive months immediately prior to the request for waiver.

The RIWG is composed of seven representatives from Class I railroads, seven representatives from Class III railroads, and two non-voting members; one from the AAR and one from the ASLRRA. The RIWG provides a useful forum for discussing and resolving outstanding issues and promoting the use of rail transportation and may issue opinions or interpretations regarding the RIA.

The RIA Provides for a Proven Method for Waiver of Interchange Commitments

Since the inception of the RIA, it has fulfilled the objectives set forth in the agreement; that is, to foster the growth of rail traffic, to prevent traffic from moving from rail to truck, and in promoting the public good. Through its auspices, short lines have been able to successfully seek and obtain waivers to interchange commitments. In most instances, the Class I and Class III carriers have been able to use informal means to allow freight to freely move between the Class

III carrier and another Class I carrier with which the short line has a connection without resort to the processes contained in the RIA. In the event of the Class III and Class I railroads cannot agree, the AAR and ASLRRA offer a mediation process to the parties at no cost.

On those occasions where informal arrangements have not been worked out, the short line has been very successful in obtaining a waiver through the RIA. The following table shows the approximate number of "formal" waiver requests and their disposition from 2006 through the end of November, 2012.²

YEAR	NUMBER OF WAIVER REQUESTS	NUMBER OF WAIVER REQUESTS GRANTED	REQUESTS OTHERWISE ADDRESSED
2006	30	15	15
2007	30	20	10
2008	35	30	5
2009	45	30	15
2010	35	20	15
2011	35	25	10
2012 through November	35	25	10

The column entitled "Requests Otherwise Addressed" includes situations the short line and Class I privately negotiated a solution outside the RIA, the short line withdrew the waiver request or the request fell outside the scope of the RIA.

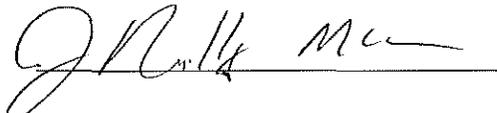
One fact that stands out from this table is the relatively few waiver requests that have been reported because, as noted above, in most instances the Class I and short line railroad have

² Note, that these numbers are approximate due, in part, to rounding and to the carry-over of pending requests from one year to the next.

been able to informally work out arrangements to have the traffic move by rail. In any event, the end result from using this process is that rail traffic has increased, new rail business has been fostered, traffic that may have migrated to truck has been preserved for movement on rail, and the short lines have had the ability to increase their business and revenues.

Thus, this process works and the RIWG sees no benefit to the industry arising out of the Proposed Rules. In fact, the institution of the Proposed Rules could well lead to an unintended consequence of stopping transactions in which a Class I transfers operation or ownership of a line to a short line. Such a result would deny shippers and small communities the benefits of the responsive service and local management associated with short line operation and may ultimately lead to a loss of rail service altogether if the Class I and short line railroad cannot structure a transaction with the same benefits to both parties that are realized through an interchange commitment. Accordingly, the RIWG submits the STB should not adopt the Proposed Rules but rather allow the process contained in the RIA to continue to work.

Respectfully Submitted,

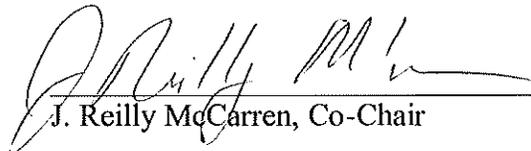


J. Reilly McCarren

VERIFICATION

I hereby verify on behalf of the Rail Industry Working Group, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on December 18, 2012.



J. Reilly McCarren, Co-Chair