

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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**Docket No. EP 711 (Sub-No. 1)**

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**Reciprocal Switching**

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Comments

of

Jason Tininenko  
Transportation Manager  
Freeport-McMoRan Inc.

Due Date: October 26, 2016

Freeport-McMoRan Inc. (together with its affiliates, “FMI”) is a natural resources company with headquarters in Phoenix, Arizona. FMI operates large, long-lived, geographically diverse assets with significant proven and probable reserves of copper, gold, molybdenum, cobalt, oil and natural gas. FMI is the world’s largest publicly traded copper producer, the world’s largest producer of molybdenum, and a significant gold, oil and natural gas producer.

FMI’s portfolio of metal assets includes the Grasberg minerals district in Indonesia, one of the world's largest copper and gold deposits; significant mining operations in the Americas, including the large-scale Morenci minerals district in North America and the Cerro Verde operation in South America.

FMI leads the North America metals industry in the production of copper and molybdenum. In North America, FMI currently operates seven open-pit copper mines — Morenci, Bagdad, Sierrita, Safford and Miami in Arizona, and Chino and Tyrone in New Mexico, and two molybdenum mines — Henderson and Climax in Colorado. In addition to our mines, FMI also operates a smelter and copper rod mill at its Miami, Arizona complex.

FMI’s impact on the economies in the three states where our mining operations are located is significant. We employ approximately 9,500 people in Arizona, New Mexico and Colorado, and the economic impact in 2015 of our activities in those states was estimated to be \$3.4 billion, equivalent to more than 33,000 jobs.<sup>1</sup>

Our operations rely on efficient railroad support to help manage the transportation of numerous commodities and keep these operations globally competitive. The employment created

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<sup>1</sup> Economic impact figures courtesy of the L. William Seidman Research Institute, Arizona State University.

by our business are critical to the communities and states where we operate and our products are essential for America's economy.

FMI's primary product from our North American mines is copper concentrate, and is the most basic form of copper product produced by FMI. Copper concentrate produced at our mines in North America generally contain 20 percent to 30 percent copper and is the resulting product after mine ore (containing less than 1 percent copper) has been crushed, milled and concentrated. The majority of this North American concentrate production is shipped to the company's smelter in Miami, Arizona where copper anodes are produced. These anodes are then sent to the electrolytic refinery in El Paso, Texas where they are used to produce copper cathode.

Copper concentrate that we do not transport to our Miami Smelter is shipped to both domestic and international customers. Domestically, our customers operate smelters in Hayden, Arizona and Magna, Utah. The Hayden, Arizona smelter is approximately 100 miles from our Sierrita mine, 140 miles from our Morenci mine, and 225 miles from our Chino and Tyrone, New Mexico mines. The Magna, Utah smelter is approximately 700 miles from our Morenci and Miami mines, 750 miles from our Tyrone and Chino mines and 800 miles from our Sierrita mine.

Internationally, we transport our copper concentrate to customers who operate smelters throughout the world, including Mexico, South American and the Far East. The majority of the copper concentrate shipped to our international customers moves via rail to ports in Mexico for loading on to ocean vessels; however, some of the copper concentrate may be shipped by rail to customers who operate smelters in Mexico.

In addition to the production and use of copper concentrate, FMI also is a major producer and purchaser of sulfuric acid. FMI uses sulfuric acid as part of the solvent extraction and electrowinning ("SX/EW") copper production process, which is used at all of our North American

copper mines. Much of our sulfuric acid requirements is met by the sulfuric acid production at our Miami Smelter<sup>2</sup>, however our sulfuric acid needs often exceed our production. We therefore source significant tons of acid per year from the open market and arrange transportation for the production of sulfuric acid from a sulfur burner at our Safford mine.

Both the transportation of copper concentrate and sulfuric acid is extremely conducive to rail transportation. Given the distances between our mines and the domestic smelters in Hayden, Arizona and Magna, Utah, rail transportation is more cost effective in many instances than truck transportation. International sales of copper concentrate usually involve the transportation of the product to overseas smelters by chartered ocean vessels, and entails the unit train transportation of the copper concentrate from our mines to export ports. Similarly, while some open market sulfuric acid is produced in the Southwestern U.S. and accessible to our facilities by road transportation, we also receive sulfuric acid from other North American and global chemical producers. Many of these producers are located along the Gulf Coast, while others are located as far away as Canada. These long distance movements almost always involve rail transportation.

All of our rail served copper mines and smelter, including Morenci, Miami, Sierrita, Tyrone and Chino, are captive to a single railroad. Our Morenci and Miami mines and Miami smelter are served exclusively by the Arizona Eastern Railway (“AZER”), a subsidiary of the Genesee & Wyoming Corporation (“G&W”). Our Sierrita mine is captive to the Union Pacific Railroad Company (“UP”), while our Tyrone and Chino mines are exclusively served by the Southwestern Railroad Company (“SWRR”). Given the importance rail transportation has to shipping our

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<sup>2</sup> Sulfuric acid is a by-product of the copper smelting process as sulfur dioxide gas is captured and converted into sulfuric acid.

products and our captive status to a single railroad in almost all of our locations, FMI has a vested interest in ensuring continued reasonable and efficient rail service at its business locations.

The Surface Transportation Board’s (“STB” or “Board”) decision, served July 27, 2016, in Docket No. EP 711, *Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, and Docket No. EP 711 (Sub-No. 1), *Reciprocal Switching*, (“*Decision*”) granted, in part, the National Industrial Transportation League’s (“NITL”) petition to adopt revised reciprocal switching regulations and proposed regulations “which would allow a party to seek a reciprocal switching prescription that is either practicable and in the public interest or necessary to provide competitive rail service.”<sup>3</sup> The Board proposed new regulations because “there have...been many changes that have occurred in the rail industry since [t]he 1980s.”<sup>4</sup> The *Decision* also sought comment on a number of issues associated with the proposal.

The *Decision* solicits comments on “whether the Board should, now or in the future, extend the rules to include smaller carriers.”<sup>5</sup> Specifically, the Board states that “[u]nder both prongs of the proposed regulations [practicable and in the public interest or necessary to provide competitive rail service], prescriptions of reciprocal switching would be limited to instances in which both the incumbent railroad and the competing railroad are Class I carriers.”<sup>6</sup> However, the Board recognizes that “[p]articularly relevant to reciprocal switching, the consolidation of Class I carriers and the creation of short lines that may have strong ties to a particular Class I likely reduces the

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<sup>3</sup> *Decision*, p. 1.

<sup>4</sup> *Id.*, p. 9.

<sup>5</sup> *Id.*, p. 21.

<sup>6</sup> *Id.*, p. 20.

chance of naturally occurring reciprocal switching as carriers seek to optimize their own large networks.”<sup>7</sup>

The Board understands that there may be “strong ties” between a Class I railroad and a short line or small railroad but does not recognize the potential implications of this type of relationship in this proceeding. Small railroads, or Class II and Class III carriers, are defined as rail carriers that have annual operating revenues of up to \$250 million or \$20 million in 1991 dollars, respectively. In 2014 dollars, these amounts grew to \$475 million and \$38 million, respectively.

The small railroads provide an essential service to the robust U.S. rail network by providing rail service over light-density lines that the Class I railroads are not interested in operating and linking customers in small communities to the larger rail network. Small railroad traffic is often subject to competition from trucks, intermodal operations or barges. However, not all small railroads are the same.

Some small railroads set their own prices and operate as true entrepreneurs building business and often acting effectively as independent switch carriers. Other small railroads are beholden to a single Class I railroad through financial control, operational control or other types of restrictions including interchange restrictions. Interchange restrictions, or “paper barriers,” are contract terms between a small railroad and Class I carrier that restrict the small railroad’s ability to provide service to other Class I railroads with which it can interchange.<sup>8</sup>

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<sup>7</sup> *Id.*, p. 9.

<sup>8</sup> See STB Ex Parte No. 575 (Sub-No. 1), *Disclosure of Interchange Agreements*, served October 30, 2007.

Many short line railroads act simply as switching carriers for the Class I railroads with which they interchange. A switching carrier is in most cases a short line railroad that spots the railcar at the origin or destination, but does not participate in the road haul portion of the movement. The switching carrier is not involved in the negotiations of the line haul rate, but instead only receives a flat charge from the connecting railroad for its services.<sup>9</sup>

In some situations, a small railroad may both be restricted from interchanging with another railroad, and also act as a switching carrier for the single railroad in which it interchanges. The short line provides the first or last mile of service for the railroad it interchanges with, and has no say in the amount of the rate the shipper pays for the line haul transportation, but is restricted from interchanging with any other railroad due to interchange restrictions. The small railroad in this instance acts simply as an arm of the connecting Class I railroad.

As stated above, FMI is captive to a single railroad at its Arizona and New Mexico operations. Our Sierrita mine is captive to the UP, and our Morenci mine and Miami mine and smelter are captive to the AZER. The AZER is a Class III railroad that interchange only with the UP. Our Tyrone and Chino mines are captive to the SWRR; but unlike the AZER, the SWRR can physically interchange with the UP or the BNSF Railway Company (“BNSF”) at the SWRR’s Deming, New Mexico yard. While it can physically interchange with both the UP and BNSF at its Deming yard, the SWRR is effectively restricted from interchanging with the UP in most cases because of the terms of a lease agreement between the BNSF and the SWRR.<sup>10</sup>

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<sup>9</sup> See, for example, CSX’s definition of a switching carrier at <https://www.csx.com/index.cfm/about-us/company-overview/railroad-dictionary/?i=S>.

<sup>10</sup> The lease between the BNSF and SWRR is confidential, and FMI does not know the specific interchange restrictions in place. Instead, FMI has simply been told by BNSF, UP and SWRR that there are restrictions in interchanging that limit the interchange between SWRR and UP.

Additionally, because the SWRR acts as switch carrier for the BNSF, which sets the line haul rates for FMI's movements, FMI is essentially captive to the BNSF on rail movements from its Chino and Tyrone mines. So while the SWRR physically originates or terminates the rail traffic at our Tyrone and Chino mines, the BNSF controls our rail movements from these locations due to its setting of the line haul rates and the interchange restrictions it places on the SWRR.<sup>11</sup>

The Board's proposed rules on reciprocal switching would exempt movements that involve Class II and Class III carriers. Limiting the availability of reciprocal switching prescriptions to those situations that only involve Class I rail carriers would mean that Class I railroads could "game the system" by limiting access to what would otherwise be an effective interchange location that could be subject to the *Reciprocal Switching* proposal.

The U.S. rail system is an intricate network of small and large carriers providing service over a network of feeder lines, interchanges and long-haul routes all over the country. The *Reciprocal Switching* proposal should apply to any situation where it "is either practicable and in the public interest or necessary to provide competitive rail service,"<sup>12</sup> and be made "more equally available to all shippers."<sup>13</sup> Just because a carrier is small should not exempt it from this proposal. FMI believes the proposed reciprocal switching regulations should apply to restricted small railroads like the SWRR as this type of small railroad is in effect operating as an extension of a Class I carrier. The Class I carrier controls the pricing on the line haul portion of the movement, and can control who the short line railroad can interchange with and the switch fee it pays to the

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<sup>11</sup> In those situations in which the SWRR does interchange with the UP, BNSF is still paid a portion of the line haul rate even though it has no physical involvement with the movement.

<sup>12</sup> *Id.*, p. 1.

<sup>13</sup> *Id.*, p. 15.

short line. It is just this type of anti-competitive situation the Board's proposed reciprocal switching rules seeks to resolve.

Respectfully submitted,

Jason Tininenko  
Transportation Manager  
Freeport-McMoRan Inc.

VERIFICATION

STATE OF ARIZONA            )  
  )  
CITY OF PHOENIX            )

I, Jason Timinenko, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading. This pleading is in regards to The Surface Transportation Boards Ex. Parte 711 Sub-No. 1 Reciprocal Switching matter. Executed on 10/26/16.

Jason Timinenko

Kathy A. Tassoul  
Notary Public for the State of Arizona

Registration Number:

# 265346

