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Docket No. EP 711

PETITION FOR RULEMAKING TO ADOPT REVISED COMPETITIVE SWITCHING RULES

REPLY COMMENTS AND EVIDENCE OF UNION PACIFIC RAILROAD COMPANY

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Union Pacific Railroad Company ("UP") offers these reply comments in response to the opening comments filed in this proceeding, which the Board instituted to obtain evidence about the impact of a proposal by The National Industrial Transportation League ("NITL") to modify the Board's mandatory reciprocal switching standards. *See Petition For Rulemaking To Adopt Revised Competitive Switching Rules*, EP 711 (STB served July 25, 2012) ("*EP 711 Notice*").[1]

Part I of these comments introduces the critical issues raised by the opening submissions of NITL and other proponents of forced switching and summarizes UP's reply comments. Part II shows NITL and its allies understate the public harms that would result from adoption of NITL's proposal. Part III shows NITL and its allies fail to demonstrate any public benefits from forced switching. Part IV discusses the increased regulatory burdens that would inevitably follow from adoption of NITL's proposal.[2]

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[1] Information that UP has designated Highly Confidential and that is redacted from the public version of this submission is placed between double brackets in the text.

[2] UP endorses the Reply Comments and Evidence of the Association of American Railroads ("AAR Reply"), and it will not repeat here AAR's detailed critiques of the evidence submitted by NITL and other proponents of forced access.

I. INTRODUCTION AND SUMMARY

NITL and other proponents of forced reciprocal switching failed to submit evidence to justify the dramatic expansion of governmental intervention in the railroad industry that would result from adoption of NITL's proposal. As UP showed in its opening comments, adoption of NITL's proposal would allow certain shippers to demand service that the rail network is not designed to provide, and accommodating those shippers' demands would degrade network operations and drive down service levels for all customers.

In fact, NITL admits that forced switching would be costly and inefficient.[3] Indeed, it admits that it does not expect to accomplish its objective of obtaining lower rail rates by creating actual rail-to-rail competition. Rather, NITL expects to get lower rates by threatening incumbent railroads with the prospect of the increased costs and inefficiencies that would result from forced switching.[4] Thus, NITL says, the Board need not worry about costs and inefficiencies: shippers would not harm network operations by actually using forced switching—at least not as long as railroads give them the lower rates they really want.[5]

Even if the Board could lawfully adopt NITL's proposal, it should not adopt rules that would allow certain shippers to hold railroads hostage to their demands for lower rates. Nor

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[3] *See* Opening Submission of The National Industrial Transportation League ("NITL Op.") at 49 (acknowledging that switching traffic to another carrier "costs both time and money"); *id.* ("[A]t the end of the day the transportation provided by the accessing carrier is unlikely in all cases to be as timely as the service provided by the carrier actually serving the shipper's facility, because of the need for the switch.").

[4] *See id.* at 60 (asserting that an incumbent railroad threatened with forced switching "has a *huge* incentive to keep the business, even at a lower profit level" (emphasis in original)); *see also id.* at 58 ("[T]he number of cars actually shifting routes is likely to be a very small proportion of the total number of cars eligible for competitive switching . . . .").

[5] *See id.* at 59 ("[T]here can be no adverse efficiency or operational effects if most cars simply remain on their existing route.").

should the Board adopt rules that would permit broad use of forced switching when even the rules' proponents do not deny the potential for massive harm if forced switching were broadly used.

In any event, the Board could not lawfully adopt NITL's proposed back-door method of obtaining rate relief. NITL is incorrect when it asserts that Congress intended forced switching under 49 U.S.C. § 11102 to provide shippers with an alternative means of obtaining rate relief.[6] Congress established separate rules for making relief available to shippers that believe they are paying unreasonable rates and to shippers that believe they are suffering other competitive harm. To obtain rate relief, a shipper must establish that the railroad has market dominance over the transportation to which the rate applies and that the challenged rate is unreasonable. *See* 49 U.S.C. § 10701(d). NITL's proposal would allow shippers to obtain rate relief without establishing those facts, and thus it would not be a lawful means of regulating rates.[7]

NITL is also incorrect when it asserts that Congress intended forced switching under 49 U.S.C. § 11102 to produce the regulatory restructuring of the rail marketplace that would follow from adoption of NITL's proposal.[8] *See EP 711 Notice* at 6 ("NITL's proposal, if adopted, could change the competitive rail service landscape . . . ."). The Interstate Commerce Commission ("ICC") and the Board have repeatedly interpreted their statutory authority to order reciprocal

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[6] *See* NITL Op. at 16 ("[NITL's proposal] is intended to operate as a supplement to, and not a replacement for, the existing remedies available to shippers. The League strongly believes that the intent of the Staggers Act was to allow shippers both rate and switching remedies, and that the existence of one option should not foreclose pursuit of the other.").

[7] *See Midtec Paper Corp. v. United States*, 857 F.2d 1487, 1505 (D.C. Cir. 1988) (rejecting contention "that section [11102] was intended to be an alternative means of obtaining rate relief").

[8] *See* NITL Op. at 5 (asserting that NITL's proposal is intended replace the current competitive access rules, which have failed "to fulfill the intention of the Staggers Act").

switching and other forms of access relief as a means of addressing specific instances of anticompetitive conduct, not as a tool to restructure the competitive landscape.[9] Courts reviewing the agency's decisions have repeatedly agreed that Congress never intended that access remedies would be applied on a wholesale basis to restructure the railroad industry.[10]

NITL is incorrect yet again when it claims that adoption of its proposal is justified by a need to "restore rail competition" that has been lost as a result of railroad consolidations.[11] The ICC and the Board were aware of the degree of consolidation in the rail industry when they approved past consolidations, and they imposed conditions necessary to ensure that no shipper would lose competitive rail service as a result of those consolidations.[12] Significantly, a basic premise of each of the agency's consolidation decisions was that single-line service was superior

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[9] *See Intramodal Rail Competition*, 1 I.C.C.2d 822 (1985) (adopting competitive access rules), *aff'd sub nom. Balt. Gas & Elec. Co. v. United States*, 817 F.2d 108 (D.C. Cir. 1987); *Midtec Paper Corp. v. Chi. & N.W. Transp. Co.*, 3 I.C.C.2d 171, 174 (1986) ("[W]e think it correct to view the Staggers changes as directed to situations where some competitive failure occurs."), *aff'd sub nom. Midtec Paper Corp. v. United States*, 857 F.2d 1487 (D.C. Cir. 1988); *Cent. Power & Light Co. v. S. Pac. Transp. Co.*, 1 S.T.B. 1059, 1067 (1996) ("Congress chose not to provide for the open routing that shippers seek here."), *clarified*, *Cent. Power & Light Co. v. S. Pac. Transp. Co.*, 2 S.T.B. 235 (1997), *aff'd sub nom. MidAmerican Energy Co. v. STB*, 169 F.3d 1099 (8th Cir. 1999).

[10] *See Balt. Gas & Elec.*, 817 F.2d at 115 (finding "not the slightest indication that Congress intended to mandate a radical restructuring of the railroad regulatory scheme"); *Midtec*, 857 F.2d at 1507 ("We have not found even the slightest indication that Congress intended the Commission in this way to conform the industry more closely to a model of perfect competition."); *MidAmerican Energy*, 169 F.3d at 1105 (noting Congress's intention that "market forces would operate in the rail industry as they do in other spheres").

[11] NITL Op. at 6.

[12] *See, e.g.*, *Major Rail Consolidation Procedures*, 4 S.T.B. 570, 573 n.12 (2000) ("Agency decisions issued under our existing regulations have preserved and sometimes enhanced competition, while promoting efficiency-enhancing system rationalizations whose benefits were ultimately passed along to shippers in the form of lower rates and improved service."); *Union Pacific/Southern Pacific Merger–General Oversight*, 5 S.T.B. 1173, 1175 (2001) ("[T]he record demonstrates that the conditions we imposed on the UP/SP merger have maintained and fostered rail competition in the Western United States.").

to the service provided by separate carriers using interchange and would benefit shippers if expanded. UP undertook the series of consolidations that created the current UP system and invested tens of billions of dollars to improve, reconfigure, and upgrade its system to deliver the benefits of single-line service. As UP's opening comments show, the result of this continuing effort to expand single-line service has been to dramatically improve service to customers.[13] NITL and its allies provide no reason for the Board to reverse its support for single-line service in favor of a policy that would produce balkanized, inefficient rail service more reliant on interchange service.

Moreover, the evidence submitted in this proceeding confirms that adoption of NITL's proposal would be contrary to the public interest. The evidence shows that public harms would vastly outweigh public benefits. In fact, NITL and its allies failed to show *any* public benefits. They show there might be a transfer of wealth from railroads to certain shippers—the ransom railroads might pay to protect themselves and other shippers from the harmful impacts of forced switching—but transferring wealth between private firms is not a public benefit. By contrast, the evidence submitted by UP and other railroad parties shows that forced switching would disrupt network operations and transportation planning and create substantial inefficiencies. The evidence also shows that the reduction in railroad revenues and increase in uncertainty regarding future traffic flows that would result from adoption of NITL's proposal would undermine the ability and incentives of railroads to invest in their networks. As discussed above, NITL acknowledges that forced switching would be costly and inefficient, and some NITL allies even

[13] *See* Opening Comments and Evidence of Union Pacific Railroad Company ("UP Op.") at 14-19.

acknowledge that a reduction in railroad revenues would result in reduced capital investment by railroads.[14]

If shippers believe they are entitled to lower rates, they should prove that their rates are unreasonable under the guidelines established by Congress and implemented by the Board. The Board should not adopt a back-door method of providing rate relief, particularly one that would have serious collateral consequences for network operations and service to all rail customers.

II. NITL AND OTHER FORCED SWITCHING PROPONENTS UNDERSTATE THE PUBLIC HARMS THAT WOULD FLOW FROM ADOPTION OF NITL'S PROPOSAL.

The Board instituted this proceeding "to receive empirical evidence on the impact of [NITL's] proposal on shippers and the railroad industry." *EP 711 Notice* at 2. NITL and its allies, however, failed to provide evidence that fully addresses the potential impact of NITL's proposal. *First*, NITL and its allies presented analyses that plainly understate the amount of traffic that would qualify for forced switching. *Second*, they assume away the many costs and inefficiencies that forced switching would create by relying on baseless assertions about the amount of forced switching that would occur and invalid comparisons to experience under voluntary switching arrangements in the U.S. and the regulated "interswitching" regime in Canada. *Third*, they ignore the impact on railroad capital investment that adoption of NITL's proposal would create. *Fourth*, they ignore the market disruptions that adoption of NITL's proposal would cause for shippers that could not obtain forced switching and the possible revenue impacts on railroads as they attempt to respond to those market disruptions. *Finally*, they fail to confront the critical issue of access pricing. Each issue is discussed below.

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[14] *See* Comments of the U.S. Department of Agriculture ("USDA Op.") at 19.

A. NITL And Other Forced Switching Proponents Understate The Amount Of Traffic That Would Qualify For Forced Switching Under NITL's Proposal And Therefore Understate Potential Railroad Revenue Loss.

UP's opening comments explained that ambiguities in NITL's proposal, limitations in the available data, and the impossibility of predicting individual shipper and railroad reactions to a new forced switching regime precluded efforts to quantify with precision the impact of NITL's proposal. NITL and its allies purported to quantify the amount of traffic that would qualify for forced switching, but their analyses plainly understate the potentially affected traffic.

The NITL analysis fell short in several respects. For example:

- NITL did not model the impact of its proposed conclusive presumption that a shipper lacks effective inter- or intramodal competition when the railroad serving the facility at issue handled 75% or more of the transported volumes of the movements at issue in the prior twelve-month period.[15] NITL ignored all the traffic that would qualify for forced switching under the 75% presumption.[16]

- NITL did not model the impact of its proposed conclusive presumption that a "reasonable distance" between a shipper facility and a working interchange is "a radius of 30 miles."[17] NITL used rail miles rather than radial miles.[18]

- NITL did not model the impact of forced access to stations on Canadian National Railway, Canadian Pacific Railway, or The Kansas City Southern Railway.[19]

Apart from AAR, the other parties in this proceeding that purported to quantify the impact of NITL's proposal also used models that failed to address the 75% and the 30-mile radius presumptions, and their analyses also focused only on subsets of rail traffic.[20]

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[15] *See* Petition for Rulemaking of The National Industrial Transportation League at 8.

[16] *See* NITL Op. at 7 n.10.

[17] Petition for Rulemaking of The National Industrial Transportation League at 8.

[18] *See* NITL Op. at 39.

[19] *See* NITL Op., Verified Statement of Henry Julian Roman ("Roman V.S.") at 20.

[20] These other parties include the U.S. Department of Agriculture, the U.S. Department of Transportation, and a coalition of agricultural interests that includes the National Grain and Feed Association, the Agricultural Retailers Association, National Barley Growers Association, USA (continued...)

AAR's Reply describes in detail the flaws contained in the analyses presented by NITL and other parties. The bottom line is clear: the Board cannot use their analyses to determine the amount of traffic that would qualify for forced switching.

B. NITL And Other Forced Switching Proponents Rely On Baseless Assumptions And False Analogies To Assume Away The Costs And Inefficiencies Of Forced Switching.

UP's opening comments described the negative impacts of forced switching on the railroad network and shippers. As UP explained, every car subject to forced switching would require extra yard switching, which typically means 24 to 48 hours of delay in each direction for each affected car movement between railroads. UP also explained that the impacts of additional switching would not be confined to the shippers that use reciprocal switching—service to all customers using the rail yard, and potentially many other customers throughout the rail network, would be affected by the increased consumption of yard capacity and disruptions to existing operations resulting from additional switching.

NITL concedes that forced switching would be costly and inefficient.[21] However, NITL asserts that the negative operational consequences of adopting its proposal will not be substantial because little forced switching would actually occur, forced switching has not caused operational problems in Canada, and forced switching would be no different than voluntary switching that

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Rice Federation, National Oilseed Processors Association, The National Chicken Council, National Association of Wheat Growers, National Council of Farmers Cooperatives, and National Corn Growers Association (collectively, "NGFA").

[21] *See* note 3, *supra*; *see also* Comments of Highroad Consulting Ltd., Verified Statement of Neil Thurston at 27 ("From a purely task-oriented perspective, switching rail cars between railways at interchange points or within rail yards for train-building or shipper placement objectives is a more time consuming and resource demanding activity than simply hauling trains along a mainline operation.").

occurs today. The Board cannot rely on NITL's efforts to downplay the potential negative operational consequences of adopting NITL's proposal for several reasons.

First, NITL's claims regarding the likely amount of forced switching that might occur are based on NITL's obviously understated estimate of the amount of traffic that would qualify for forced switching. AAR's opening evidence shows that the amount of qualifying traffic could be six times higher than NITL's estimate, and AAR's estimate is likely understated because it does not include traffic from exclusively-served facilities that are located at points served by two or more railroads.

Second, the Board should not adopt a remedy that it would not be prepared to apply to all traffic that would qualify for relief. NITL's claim that only a small fraction of traffic that would qualify for forced switching would actually be switched makes no sense: railroads would have no incentive to reduce rates to retain traffic subject to forced switching unless switching was a real possibility. Moreover, NITL's claim rests on manipulations of outdated data reflecting outcomes under a different regulatory regime that applies to a different set of shippers, railroads, rail networks, and transportation markets than those that would be affected by NITL's proposal. No one can predict exactly how individual shippers and railroads would respond to adoption of NITL's proposal—especially when the access prices are unknown—but NITL would not be pursuing its proposal so vigorously unless it believed switching was a real possibility.

As UP observed in its opening comments, NITL's proposal involves many unknowns, but there is no dispute that additional switching would be costly and inefficient, and that shippers who use forced switching would be imposing the potentially devastating consequences of their decisions on other customers and on the rail network. The proponents of forced switching do not deny the potential for massive harm—they just assert it is unlikely to be realized. In other

words, NITL does not defend the remedy it proposed. Adopting a remedy that promises widespread harm to the railroad industry if it is exercised would be arbitrary and capricious.[22]

Third, NITL's extensive discussion about the Canadian experience with interswitching is irrelevant to the issues facing the Board. Even assuming for the sake of argument that NITL is correct when it claims that interswitching has had a minimal impact on rail operations in Canada, Canadian rail networks are different from UP's network in ways that would affect the impact of forced switching. UP's network is much more complex, with much denser operations, than the rail networks in Canada. For example, CN and CP are largely parallel, linear networks, with primarily east-west traffic flows. By contrast, UP's network involves multiple hubs and spokes, which mesh with hub and spoke networks operated by other U.S. railroads. According to NITL, in all of Canada, there are just 70 interchanges where CN and CP are subject to interswitching.[23] By contrast, NITL says there would be 501 stations on UP impacted by NITL's proposal.[24] In 2011, UP operated nearly 32,000 miles of road—41% more than the 22,442 miles of road that CN and CP combined operated in all of Canada.[25] That same year, UP originated more than 7.42 million carloads in 2011—73% more than CN's and CP's combined 4.28 million carloads.[26]

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[22] *Cf. Burlington N.R.R. v. ICC*, 985 F.2d 589, 597 (D.C. Cir. 1993) (approach to rate regulation that through repeated application would establish a 180% R/VC ceiling lacked "any glimmer of supporting principle or intellectual coherence").

[23] *See* NITL Op., Verified Statement of Thomas L Maville ("Maville V.S.") at 23.

[24] *See* NITL Op., Roman V.S., App. C. NITL identified the 501 stations using its analysis based on rail miles rather than radial miles. Presumably, the number would have been higher had NITL analyzed its actual proposal to use radial miles.

[25] *See* Association of American Railroads, Railroad Facts (2012). Data regarding the Canadian operations of CN and CP were developed by subtracting 2011 data reported separately for Grand Trunk Corporation and Soo Line Corporation on pages 72 and 75 from CN and CP totals reported on pages 78 and 79.

[26] *See id.*

And, UP's system-average density was 33.6 million gross ton-miles per route mile—75% higher than CN's and CP's combined average of 19.2 million gross ton-miles per route miles.[27] Moreover, there are no terminals in Canada that even approach the level of complexity of UP operations in Chicago, Houston, Kansas City, St. Louis, Los Angeles, Portland, Denver, Memphis, or Minneapolis/St. Paul.

The differences between UP's network and Canadian rail networks mean that forced switching would affect many more locations, a much larger volume of traffic, and vastly more complicated traffic flows and interchange relationships on UP than in Canada, which means that operational changes to accommodate new switching would be more costly, more difficult to implement, and more likely to affect other traffic. These differences also mean that disruptions on UP would affect more traffic and would be more likely to spread beyond the original source of the problem.[28]

Moreover, Canada's rail networks were built against a background of interswitching. As NITL expert explains, interswitching has been the law in Canada for more than 100 years, and the 30-kilometer radial limit has been the law for the past 25 years.[29] By contrast, the U.S. regulatory environment for the past 25 years has strongly encouraged railroad consolidation and

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[27] Route miles were developed as described in note 25, *supra*. Gross ton-miles for UP are from Schedule 755 in UP's 2011 Annual Report Form R-1. Gross ton-miles for Canadian operations of CN and CP were developed by subtracting the gross ton-miles reported in Grand Trunk's and Soo Line's 2011 Schedule 755s from the gross ton-miles reported in CN's and CP's Annual Reports. *See* CN 2011 Annual Report, *available at* http://www.cn.ca/en/investors/financial-information/annual-reports; CP 2011 Annual Report, *available at* http://www/cpr.ca/en/invest-in-cp/financial-reports/archive-by-year/Pages/default.aspx?ItemId=2011.

[28] The implications of difference in rail networks on the operational changes to accommodate forced switching have been verified by Richard A Gray, General Director, Asset Planning, in UP's Network Planning and Operations Department.

[29] *See* NITL Op., Maville V.S. at 7. NITL's proposed 30-mile radius would be much larger than the 30-kilometer radial limit used in Canada.

the expansion of single-line service, while preserving rail competition where it existed. As UP described in its opening comments, UP relied on that U.S. policy to streamline its network by reconfiguring its operations and redesigning train services to promote single-line service, while eliminating freight yards that had provided en route switching and eliminating or scaling back interchange facilities that had become unnecessary. UP has no doubt that Canadian railroads have also streamlined their operations over time, but they did so against the background of a forced interchange regime. UP's network is not designed to accommodate the interchange traffic that adoption of NITL's proposal could produce. The Board cannot use experience of Canadian rail networks, which were built under a regime of interswitching, to make valid predictions about the impact of imposing forced switching on U.S. rail networks, which were never designed to accommodate forced switching.

Fourth, NITL's assertion that forced switching would be no different from voluntary reciprocal switching is incorrect. Where reciprocal switching exists today, it is the product of voluntary agreements—the carrier providing the switching determined it had sufficient capacity to provide the service (at least at historical levels). In UP's experience, the serving carrier can cancel or limit the arrangement if it becomes excessively burdensome. Also, in most cases, voluntary switching arrangements were market-driven, mutually beneficial arrangements: they allowed multiple carriers already serving the same terminals to avoid building duplicative tracks to serve each shipper facility. In many cases, traffic subject to voluntary switching was not competitive as a practical matter—that is, one carrier had a decidedly superior route for certain movements, so switching increased overall efficiency. Moreover, because switching arrangements were often reciprocal in a practical sense—that is, carriers were simply exchanging switching services—the carriers expected that the payables and receivables would cancel out. In

this environment, switching fees were not necessarily dictated by costs or regularly adjusted to reflect changes in costs.[30]

NITL is not proposing a minor extension of an existing practice. The numbers alone belie that suggestion. NITL counts approximately 100 stations in UP's Reciprocal Switching Circular.[31] By contrast, as noted above, NITL says that 501 stations on UP would be impacted by NITL's proposal.[32] Plainly, most locations covered by NITL's proposal would be locations where there is no reciprocal switching today. This means the locations covered by NITL's proposal will not be locations where reciprocal switching developed as a market-driven, efficiency-enhancing arrangement.

Moreover, because forced switching would not result from voluntary, market-driven, efficiency-enhancing arrangements and because it likely would not affect all carriers equally,[33] switching fees would play a critical role in preventing inefficient outcomes and appropriately compensating the serving carriers—an issue discussed below in Part II.E.

In sum, the Board should not be deceived by NITL's claim that forced switching would be no different from existing voluntary switching arrangements.

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[30] *See, e.g.*, *Switching Charges and Absorption Thereof at Shreveport, LA*, 339 I.C.C. 65, 70 (1971) ("Frequently, the switching charges made available by each carrier for reciprocal switching are constructed without regard to the actual cost of the service, on the theory that these mutually incurred costs balance out each other.").

The facts and information regarding UP's experience with reciprocal switching have been verified by Chris Sanford, Director, in UP's Interline Marketing Department.

[31] *See* NITL Op. at 21. UP also performs reciprocal switching at 50 stations that are not listed in its circular. UP's circular does not list stations where UP agreed to provide reciprocal switching as a condition to the Board's approval of the Union Pacific/Southern Pacific merger or in connection with UP's and BNSF Railway's acquisition of joint ownership of a line of railroad between Dawes, Texas, and Avondale, Louisiana.

[32] *See* NITL Op., Roman V.S., App. C.

[33] *See id.*

C. NITL And Most Forced Switching Proponents Ignore The Impact Of NITL's Proposal On Railroad Capital Investment.

UP's opening comments observed that the most predictable consequence of adopting NITL's proposal would be the reduction of capital investment in the railroad industry. As UP explained, forced access at artificially low rates would reduce the amount of income available for investment through a combination of rate compression and higher operating costs, and UP's shareholders would react to the prospect of diminished returns by insisting on reductions in capital expenditures. UP also explained that it would face diminished incentives to invest in projects to support traffic growth where there was a risk that it would be forced to switch the traffic to a competitor. And UP explained that any investment in yards and other facilities to support higher cost switching of traffic to competitors to provide slower service where it had been providing efficient, single-line service would be wasteful and inefficient.

USDA recognizes that reductions in railroad revenue that would result from adopting NITL's proposal would lead to reductions to railroad capital expenditures.[34] NITL and its other allies ignore this issue in their attempt to downplay the potential impact of forced switching on railroad revenues and costs. But even NITL's deliberately understated analysis of the impacts of forced switching concludes that the four railroads that NITL analyzed could lose as much as $1.29 billion in annual revenue, which is more than 10% of the $11.6 billion that all railroads invested to upgrade and expand the capacity of the railroad network in 2011.[35] As AAR's analysis shows, the actual carloads impacted and associated revenue loss could be much higher, and the overall impact on funds available for investment would be higher still after accounting for the additional costs that railroads would incur to provide forced switching. Consequently,

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[34] *See* USDA Op. at 19.

[35] *See* https://www.aar.org/economy/Pages/Railroad-Investment.aspx#.UY0U0KI4vTo.

while a select group of shippers might obtain lower rates as a result of forced switching, the harms from reduced investment would be experienced by all shippers who are relying on railroads to continue investing to maintain and to expand the U.S. rail network as traffic volumes grow.

D. NITL And Other Forced Switching Proponents Ignore The Market Impacts Of NITL's Proposal On Shippers That Would Not Qualify For Forced Switching And The Related Revenue Impacts On Railroads.

UP's opening comments noted that shippers that would not qualify for forced switching would suffer two basic types of harms if NITL's proposal were adopted and access prices were set artificially low. *First*, these shippers would feel the effects of increased network congestion from additional switching and disruption of existing, efficient transportation plans—their rail service would be slower and less reliable, and thus their car supply costs and inventory carrying costs would increase. UP explained how NITL and its allies erroneously assumed away these harms above in Part II.B. *Second*, these shippers would face a competitive disadvantage to the extent they compete with shippers that use forced switching to obtain artificially low rail rates. NITL and its allies ignore this competitive harm. Moreover, NITL and its allies ignore how railroad efforts to address the market impacts of forced access on their customers could significantly increase the financial impact of forced access on railroads.

The evidence in this proceeding leaves no doubt that adoption of NITL's proposal would create "winners" and "losers" among shippers if access prices are set artificially low. The most obvious "losers" would be those shippers that could not take advantage of NITL's proposed regime. If those shippers compete in product markets against shippers whose costs reflect artificially low access prices, they would be at a competitive disadvantage, and they might need to find different markets for their product or exit the industry altogether. Or, these disadvantaged shippers might ask the railroad to reduce its rate to preserve their business. If the railroad's

choice is between reducing its rate and losing business to a shipper on another railroad, it might well reduce its rate—which would result in a loss of revenue through a mechanism that is not addressed by NITL's (or AAR's) analysis.

Shippers would also be "losers" under NITL's proposal if they fall victim to the operating harms associated with forced switching and their service suffers or their costs increase relative to their competitors' service or costs. These shippers would also find themselves at a competitive disadvantage, and they, too, might have to find new markets, exit the industry, or request some assistance from the railroad that serves their facilities. This is yet another instance in which forced switching might reduce railroad revenues or increase railroad costs in a way not quantified by any of the analyses submitted in this proceeding.

E. NITL And Other Forced Switching Proponents Fail To Confront The Critical Issue Of Access Pricing.

UP's opening comments noted that the Board may not impose an access price or pricing formula but must instead afford the affected railroads the opportunity to agree on "the conditions and compensation applicable" to any forced switching arrangement before it could prescribe a rate. 49 U.S.C. § 11102(c)(1). UP explained, however, that if the price were set at any amount less than the serving railroad's actual costs of providing the switching plus the railroad's lost contribution from switching the traffic to competitors, the forced switching regime would create inefficient outcomes in which the serving railroad would be subsidizing its competitors.

NITL and other proponents of forced access fail to propose and defend an access pricing methodology. This means their analyses of NITL's proposal are not simply understated, they are

also fatally incomplete, because their estimates of the proposal's impact depend critically on the assumed access price.[36]

NITL and several allies present analyses that assume access prices based on Canada's interswitching regime, but they carefully avoid advocating for the adoption of the prices they use in their analyses ($300 per car for most shipments; $89 per car for shipments of 60 or more cars). They cannot credibly argue that Canadian prices would be appropriate for shipments in the U.S., because the Canadian prices are based on the actual costs of switching in less complex Canadian terminals and do not reflect actual costs of switching in U.S. terminals and because the prices do not reflect the jurisdictional threshold established under U.S. law.[37] NITL and its allies also appear reluctant to embrace any particular prices because they want room to argue for even lower access prices in subsequent proceedings—which points to another reason their analyses likely understate the potential impacts of NITL's proposal.

Moreover, NITL and its allies fail to explain how whatever access pricing regime they have in mind would prevent inefficiencies and subsidies. NITL says that access prices should be "cost-based" to ensure that "railroads recover the costs of performing the switching service."[38] However, NITL never explains what it means by "cost-based" and never addresses the subsidies

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[36] *See, e.g.*, NITL Op., Roman V.S. at 30-31. AAR's estimates do not include an assumed access price because AAR assumed a variety of different rate reduction and traffic diversion scenarios.

[37] *See* NITL Op., Roman V.S. at 11 (explaining that Canadian interswitching rates are based on studies that determine "the actual costs for interswitching movements at all interchanges where interswitching is performed"); NITL Op., Maville V.S. at 18 (explaining that new interswitching rates will allow railroads to charge a 20.5% markup over their variable costs).

USDA argues that the Board should set access prices that reflect "the average of Canadian access fees." USDA Op. at 20. However, it would be arbitrary and capricious for the Board to base access pricing on Canadian cost studies and to ignore the jurisdictional threshold that applies to railroad rates in the U.S.

[38] NITL Op. at 32-33.

and inefficient switching that would result if "cost-based" access prices do not allow the serving railroad to recover the contribution it would lose if another carrier handled the line-haul portion of the movement.

The problems associated with using cost-based access prices can readily be illustrated. Assume that: (i) railroad *X* provides single-line service to customer *A* for $15 per ton; (ii) *X*'s actual cost to provide that service is $10 per ton; and (iii) *X*'s actual cost to provide switching would be $2 per ton. If railroad *Y* were required to pay *X*'s actual cost to provide switching plus *X*'s lost contribution to gain access to *A*, then *Y* could capture *A*'s traffic only if *Y*'s actual costs (which would include the access price) were less than or equal to *X*'s—that is, only if *Y* were as efficient or more efficient than *X*. However, if *Y* were required to pay just a $2 per ton "cost-based" access price, then *Y* could capture *A*'s traffic even if its actual costs were as much as $11-$15 per ton—that is, even if *Y* were much less efficient than *X*. Effectively, then, *X* would be subsidizing the less efficient *Y*. In fact, even if the "cost-based" access price were *twice* the level of *X*'s costs of providing access, a less efficient *Y* could still capture *A*'s traffic from *X*, resulting in inefficient switching.

Voluntary reciprocal switching arrangements occur when the entry of a second railroad is justified by market conditions. Because forced switching would reflect government interference in the market where market conditions have not justified entry of a second railroad, the Board must take great care not to require switching at rate levels that would further distort market operations by creating subsidies and promoting inefficient behavior.

III. NITL AND OTHER FORCED SWITCHING PROPONENTS FAIL TO SHOW ANY PUBLIC BENEFITS FROM ADOPTION OF NITL'S PROPOSAL, MUCH LESS BENEFITS THAT EXCEED THE HARMS.

NITL and other proponents of forced switching assert that adoption of NITL's proposal would produce three types of public benefits: lower rail rates, more efficient routes, and higher traffic volumes. However, the record contains no evidence that forced switching would produce *any* public benefits, much less public benefits that would outweigh the costs and inefficiencies associated with forced switching and the reductions in railroad investment that would follow from reductions in railroad revenue and disruptions of incentives to invest.

A. Lower Rates For Selected Shippers Would Not Constitute A Public Benefit.

NITL and its allies assert that forced access would produce lower rates for some shippers. However, lower rates are not a public benefit unless the rates being reduced are unreasonable. If the initial rates are reasonable, then any rate reductions would produce public harms, not public benefits, because they would undermine the serving railroads' ability to recover the joint and common costs of their networks and deprive them of income they could invest to improve the rail network for the benefit of all shippers (including those eligible for forced switching).[39] Indeed, Congress has expressly established as a matter of public policy that railroads should be allowed to charge market-based rates unless a shipper establishes that the railroad is market dominant and that its rates are unreasonable.

Nothing in NITL's proposal limits forced switching to situations where traffic is moving under unreasonable rates. There is no reason to presume conclusively that railroads are charging unreasonable rates whenever they handle 75% or more of the transported volumes of traffic from

[39] As UP observed in its opening comments, whether any rates would actually be reduced would depend on access prices, the competitive responses of other railroads, and shippers' willingness to accept slower, less reliable service in return for lower rates. *See* UP Op. at 60.

shipper facilities over a twelve-month period. (To the contrary, when a railroad handles 75% or more of a shipper's volume for an extended period, it is more likely that the carrier is providing superior service at competitive rates.) Nor is there a reason to presume conclusively that R/VC ratios of 240% or more reflect unreasonable rates. In several recent rate cases, the Board has either denied relief to shippers complaining about rates that produce R/VC ratios above 240% or prescribed rates with R/VC ratios above 240%.[40]

NITL and its allies leave no doubt that NITL's proposal is simply an attempt to transfer wealth from railroads to selected shippers. NGFA urges the Board to modify the proposal so that more shippers of agricultural commodities would qualify relief, noting that NITL's presumptions "are, in the end, *arbitrary* and could be modified by the Board in a final rule."[41] USDA criticizes the 240% R/VC presumption because "it excludes many agricultural shippers" and describes the limit as "an *arbitrary* threshold."[42] USDA is particularly transparent about its redistributionist motivation, arguing that the "robust financial condition of the railroad industry" makes this "an ideal time for the Board to change its rules for competitive switching."[43] Indeed, USDA and

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[40] *See, e.g.*, *US Magnesium L.L.C. v. Union Pac. R.R.*, NOR 42114 (STB served Jan. 28, 2010) (prescribing maximum lawful R/VC ratios of 346% and 356%); *E.I. Dupont de Nemours & Co. v. CSX Transp., Inc.*, NOR 42101 (STB served June 30, 2008) (prescribing maximum lawful R/VC ratio of 319%); *E.I. Dupont de Nemours & Co. v. CSX Transp., Inc.*, NOR 42100 (STB served June 30, 2008) (prescribing maximum lawful R/VC ratios of 321% and 287%); *E.I. Dupont de Nemours & Co. v. CSX Transp., Inc.*, NOR 42099 (STB served June 30, 2008) (prescribing maximum lawful R/VC ratios of 332% and 329%); *Carolina Power & Light Co. v. Norfolk S. Ry.*, 7 S.T.B. 862 (2004), *reconsidering* 7 S.T.B. 235 (2003) (shipper failed to show rates for multiple movements with R/VC ratios above 400% were unreasonably high).

[41] NGFA Op. at 8 (emphasis added).

[42] USDA Op. at 5 (emphasis added).

[43] *Id.* at 18. However, as USDA sometimes seems to recognize, adoption of NITL's proposal would reduce railroads' capital investment. *See id.* at 19. As UP has explained here and in Ex Parte No. 705, UP shareholders would respond to new forced access rules proposals by insisting that the company reduce capital expenditures. *See* Comments of Union Pacific Railroad (continued...)

NGFA urge the Board to reduce the proposed 240% R/VC threshold to 180% R/VC—that is, they want the Board to award access relief automatically at the R/VC level where Congress allowed the Board to *begin* considering whether a railroad has market dominance and thus whether the Board has jurisdiction over the carrier's rates.[44]

ACC is the only proponent of forced switching that even tries to tie rate reductions to public benefits, but it merely asserts that rate reductions "will drive economic growth and be reinvested in the economy."[45] By contrast, the record here and in Ex Parte No. 705 establishes that railroads have increased capital investment in their networks as revenues have increased.[46] The evidence also shows that railroad investments would be curtailed if NITL's proposals were adopted.[47] Even USDA acknowledges that any reductions in railroad revenue that would result from adopting NITL's proposal would lead to reductions to railroad capital expenditures.[48]

Moreover, in light of ACC's complaints about railroad rates, it is important to note that chemical shippers continue to be major beneficiaries of railroad capital spending.[49] For example,

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Company, Verified Statement of James R. Young ("Young EP 705 V.S.") at 13-14, *Competition in the Railroad Industry*, EP 705 (Apr. 12, 2011).

[44] *See* USDA Op. at 6; NGFA Op. at 23. American Chemistry Council ("ACC") also fails to grasp the significance of the 180% R/VC jurisdictional threshold and thus mischaracterizes revenue earned under from traffic moving under rates above 180% R/VC as reflecting "a premium." Comments of the American Chemistry Council ("ACC Op") at 3. The statute is clear that rates above 180% R/VC cannot be presumed to be unreasonable or to reflect market dominance.

[45] ACC Op. at 5.

[46] *See* Young EP 705 V.S. at 9.

[47] *See id.* at 8-14.

[48] *See* USDA Op. at 19.

[49] ACC also cites a study it commissioned that claims chemical shippers pay a "premium" equal to the amount of revenue greater than 180% of a movement's URCS variable costs. *See* ACC Op. 3. This misuse of the jurisdictional threshold lacks any supporting economic principle and represents a naked attack on differential pricing. The critical importance of differential pricing (continued...)

UP is presently expending large sums in its Southern Region to support growth in natural gas and crude oil production, which supplies low cost feedstock to chemical producers, and which is leading the expansion of chemical production facilities. (Of course, given the interconnected nature of railroad networks, investment driven by the needs of chemical shippers will also benefit auto, export grain, industrial products, and intermodal shippers.)[50]

There is no evidence in the record that rate reductions resulting from adoption of NITL's proposals would represent anything more than private benefits to certain favored shippers, and no evidence that such private benefits could ever outweigh the public harms associated with forced switching.

B. There Is No Evidence In The Record That Forced Switching Would Result In More Efficient Routes For Any Shipments.

NITL asserts that forced switching "might" increase network efficiency because it would allow switching to take place when the competing carrier is able to offer a more efficient route than the serving carrier.[51] However, there is no evidence in the record that railroads are using

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to railroad investment is illustrated by applying ACC's definition of premium pricing to UP's 2010 waybill sample. If the supposed "premium" on UP chemical shipments (excluding intermodal) were eliminated, then UP revenue would been more than {{ }} lower. The revenue loss would have reduced UP's Net Railway Operating Income by {{ }} and pushed UP from revenue adequacy to revenue inadequacy. If ACC's definition of "premium" pricing were extended to all carload traffic, the lost revenue would have been {{ }} leaving an even larger hole in UP's approximately $2.54 billion capital budget for 2010. The revenue data contained in this note have been verified by Michael R. Baranowski, Senior Managing Director at FTI Consulting.

[50] *See* UP 2012 Annual Fact Book at 30-31, *available at* http://www.up.com/investors/attachments/factbooks/2012/fact_book.pdf.

[51] NITL Op. at 63. USDA makes a similar claim—that "efficiencies could accrue from moving freight by the most direct routes." USDA Op. at 18. However, the shortest routes are not always the most efficient. *See, e.g.*, *Entergy Ark., Inc. v. Union Pac. R.R.*, NOR 42104, slip op. at 11-14 (STB served Mar. 15, 2011) (finding proposed shorter route inferior due to challenging terrain and capital upgrades required). In addition to considerations of terrain and track quality, rail network planners must consider when overall network operations can be made more efficient by (continued...)

inefficient routes today. Railroads have every incentive to interchange traffic voluntarily when joint-line service would be more efficient, as the Board has repeatedly recognized.[52]

By contrast, the record shows that forced switching will reduce efficiency and increase costs and delays. As discussed above, NITL and its allies admit that forced switching would be costly and inefficient. And, UP has shown why harmful operational impacts of forced switching would not be confined to the shippers that use forced switching—that adoption of NITL's proposal would degrade service to shippers that gain nothing from forced switching.[53]

C. There Is No Evidence In The Record That Forced Switching Would Result In Increased Railroad Traffic.

NITL and other proponents of forced switching assert that forced switching will produce rate reductions, and the rate reductions will produce growth in rail traffic. However, the record contains no evidence that the anticipated rate reductions would produce any traffic growth at all, much less growth that would be sufficient to offset the reduction to railroad revenues resulting from the rate reductions. Indeed, claims that railroads would make up for revenue losses through

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building densities over particular routes so railroads can carry cars over longer distances with fewer disruptive work events. *See* UP Op. at 16-18; *see also* Comments of Union Pacific Railroad Company, Verified Statement of Lance M. Fritz at 19-20, *Competition in the Railroad Industry*, EP 705 (Apr. 12, 2011) (describing how UP routes traffic from Kansas City to Denver via North Platte to improve overall network efficiency). Congress recognized this point, which is why it ended the "open-routing" system and "largely freed carriers to 'rationalize their route structures making maximum use of efficient routings and eliminating others.'" *Cent. Power & Light*, 1 S.T.B. at 1065 (quoting *Interchange Provisions at Jacksonville, FL, SCL and SRS*, 365 I.C.C. 905, 916 (1982)).

[52] *See, e.g.*, *Burlington Northern et al.–Merger–Santa Fe Pacific et al.*, 10 I.C.C.2d 661, 749 (1995) ("'[M]erged railroads ... have the incentive to encourage full use of the most efficient routing, even when it entails a joint-line alternative to a single system route.'") (quoting *Seaboard Air Line R.R.–Merger–Atlantic Coast Line R.R.*, 10 I.C.C.2d 597, 606 (1995)).

[53] *See* UP Op. at 22-57.

volume growth make no sense: if railroads could obtain more contribution by reducing their rates, they would not need forced switching to spur them to act.

NITL suggests several scenarios in which railroads would benefit from reducing rates, but it cannot explain why market forces would be insufficient to produce lower rates if any of those scenarios reflected realistic opportunities. For example, NITL asserts that U.S. rail rates favor imports over domestic production and that lower rates would result in more domestic production,[54] but NITL never explains why railroads would disfavor domestic production.[55] NITL also asserts that railroad pricing is reducing rail volumes by encouraging product substitution, the movement of production to offshore companies, and diversions from rail to truck,[56] but again, NITL never explains why railroads would be making irrational pricing decisions.[57] In short, the record contains no evidence of market failure that would justify interference with railroad pricing decisions.

USDA claims that railroads would move more grain and oilseed products if they reduced their rates. It suggests there will be "traffic creation," but it never explains where the additional

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[54] *See* NITL Op., Roman V.S. at 40.

[55] As UP's current President and Chief Executive Officer explained in Ex Parte No. 705, "[c]laims that increasing rail regulation and reducing rail revenues would somehow make American companies more competitive in world markets are wrong and dangerous." Reply Comments of Union Pacific Railroad Company, Reply Verified Statement of John J. Koraleski at 65, *Competition in the Railroad Industry*, EP 705 (May 27, 2011). Policy changes like those that NITL is proposing "would drive up rail costs, destroy productivity and service, and curtain investment in the infrastructure that U.S. companies need to export American goods and keep our country competitive on the world stage." *Id.*

[56] *See* NITL Op., Roman V.S. at 41-43.

[57] NITL's argument that "[l]ower rates on impacted movements" would "help traffic switch back from truck to rail" appears to acknowledge that NITL's "conclusive presumptions" of market dominance are deeply flawed, and that NITL anticipates that forced switching would become available in many situations in which railroads are not actually market dominant. NITL Op., Roman V.S. at 43.

products would come from or where they would go to.[58] USDA's assertions regarding traffic growth are based merely on unsupported extrapolations from an old study that appears to have no connection to market reality.[59]

Finally, NITL tries to show that lower rates would produce increased volumes using three examples it claims show that originations shifted from the U.S. to Canadian railroads as a result of rail rate changes over time.[60] But the examples do not show that rates reduced by regulation produce volume growth. All of the examples involve rate increases, rather than rate reductions, and none involves regulated rates. Moreover, in each example, NITL's data cover very broad geographic regions, and they reflect average prices per carload, so it is impossible to determine whether the alleged rate changes represent anything other than differences in length of haul as origins change over time. Furthermore, most of the volume changes appear to reflect market factors other than transportation rates: in two of the three examples, volumes from Canadian origins experienced strong growth even though the Canadian rates were well above U.S. rates.

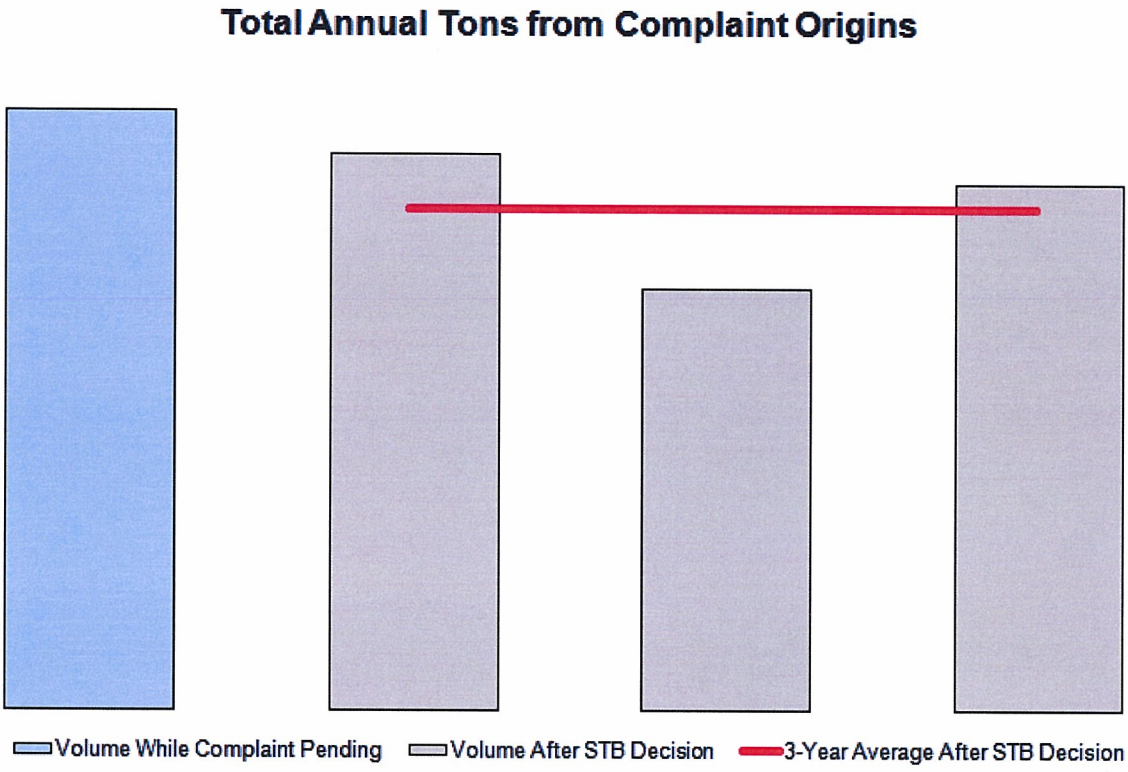
UP's experience shows that regulatory intervention to reduce rail rates is not guaranteed to generate *any* volume growth, much less sufficient growth to offset the reduced rates. In UP's three most recent coal rate reasonableness cases, the Board ordered UP to reduce rates to 180% of its variable costs. {{

[58] *See* USDA Op. at 15.

[59] ACC makes similarly unsubstantiated assertions about traffic increases. *See* ACC Op. at 5 (admitting that "ACC has not quantified the expected traffic increases").

[60] *See* NITL Op., Roman V.S. at 45-47.

}}[61] An example of this outcome is illustrated in the chart below.



Similarly, UP's Board-ordered rate reductions to {{

}}[62] UP recognizes that the outcomes it has experienced likely reflects the combination of many market-related factors, but that is precisely the point: UP's real-world experience shows that the Board cannot rely on assertions that reduced rates will deliver volume gains sufficient to make up for

[61] *See* Attachment A hereto. The information concerning UP's coal volumes has been verified by Glenn E. Carlson, Director of Market and Resource Planning for UP's Marketing and Sales – Coal Department.

[62] *See id.* The information concerning UP's chemical volumes has been verified by James R. Lemar, Senior Product Manager for UP's Marketing and Sales – Chemicals Department.

the contribution lost from forced switching. Many factors besides rail rates determine how much customers ship.

IV. ADOPTION OF NITL'S PROPOSAL WOULD INCREASE REGULATORY BURDENS.

In its Notice instituting this proceeding, the Board suggested that NITL's proposal has the potential to "reduce the agency's role in regulating the reasonableness of transportation rates" by allowing the Board "to rely on competitive market forces to discipline railroad pricing." *EP 711 Notice* at 2. As discussed above and in UP's opening comments, the Board cannot lawfully use forced access as a back-door means of regulating rates. Moreover, as also discussed in UP's opening comments, "competitive market forces" would not be disciplining railroad pricing under NITL's proposal. Instead, regulation would be supplanting the operation of market forces every time a shipper obtained a Board order that brings the possibility of forced switching to a second railroad into play. Regardless of whether forced access is used to shift traffic or as leverage in bargaining over rates with the incumbent carrier, the second railroad would be available only because of government regulation, not because market forces justified the presence of two railroads.

NITL and its allies do not try to hide that they are simply seeking an additional layer of regulation. They vigorously reject the Board's suggestion that granting forced access should eliminate a shipper's need to pursue a rate case.[63] And, contrary to the impression that NITL and its allies attempt to convey, the additional bite at the apple would be not be quick or easy. Even assuming the Board could adopt the particular "conclusive presumptions" NITL has proposed in an attempt to ease burdens on shippers, applying the presumptions would still require answering

[63] *See* NITL Op. at 14-16; NGFA Op. at 17-18; Opening Comments of Alliance for Rail Competition, *et al.* at 12-15; Opening Submission of Entergy Arkansas, Inc., *et al.* at 7-14.

critical questions on a case-by-case basis, such as whether facilities and rail lines are within the boundaries of a "terminal," whether there is an interchange where cars have been "regularly switched," and whether switching would be "safe and feasible, with no undue adverse effect on existing service." In sum, railroads, shippers, and the Board would all face substantial burdens in litigating and resolving access disputes under the vague standards proposed by NITL.

V. CONCLUSION

NITL and other proponents of forced switching have neither fully analyzed the harms that would flow from adoption of NITL's proposal nor identified public benefits that would offset the harms that UP and other railroad parties described in their opening comments and evidence. NITL's proposal is not in the public interest, and it does not merit further consideration by the Board.

Respectfully submitted,

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Attorneys for Union Pacific Railroad Company

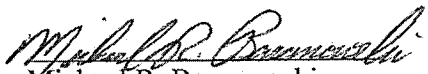
May 30, 2013

VERIFICATIONS

VERIFICATION

I, Michael R. Baranowski, Senior Managing Director at FTI Consulting, Inc., declare under penalty of perjury that I have read the portion of the foregoing Reply Comments and Evidence of Union Pacific Railroad Company that quantifies the impact on Union Pacific's revenues of capping certain Union Pacific rates at 180% of URCS variable costs and that the information is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on May 30, 2013.



Michael R. Baranowski

VERIFICATION

I, Glenn E. Carlson, Director of Market and Resource Planning for Union Pacific Railroad Company's Marketing and Sales – Coal Department, declare under penalty of perjury that I have read the foregoing Reply Comments and Evidence of Union Pacific Railroad Company and that the facts and information relating to Union Pacific's coal volumes set forth in Part III.C and in Attachment A are true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on May 30, 2013.

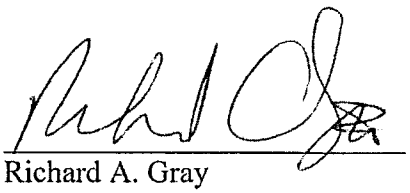
Glenn Carlson

Glenn E. Carlson

VERIFICATION

I, Richard A. Gray, General Director, Asset Planning for Union Pacific Railroad Company's Network Planning and Operations Department, declare under penalty of perjury that I have read the foregoing Reply Comments and Evidence of Union Pacific Railroad Company and that the facts and information relating to the differences between Union Pacific's network and Canadian rail networks set forth in Part II.B on Page 11 are true and correct, to the best of my knowledge, information, and belief. Further, I certify that I am qualified and authorized to file this Verification.

Executed on May 30, 2013.



Richard A. Gray

VERIFICATION

I, James R. Lemar, Senior Product Manager for Union Pacific Railroad Company's Marketing and Sales – Chemicals Department, declare under penalty of perjury that I have read the foregoing Reply Comments and Evidence of Union Pacific Railroad Company and that the facts and information relating to Union Pacific's chemical volumes set forth in Part III.C and in Attachment A are true and correct. Further, I certify that I am qualified and authorized to file this Verification.

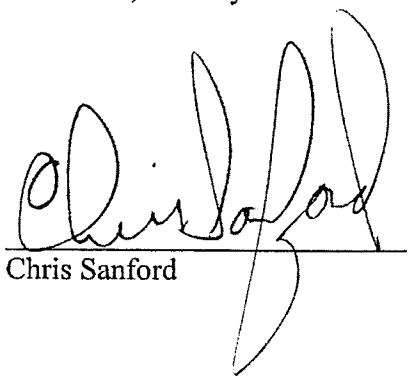
Executed on May 30, 2013.

James R. Lemar

VERIFICATION

I, Chris Sanford, Director for Union Pacific Railroad Company's Interline Marketing Department, declare under penalty of perjury that I have read the foregoing Reply Comments and Evidence of Union Pacific Railroad Company and that the facts and information relating to Union Pacific's experience with voluntary reciprocal switching set forth in Part II.B are true and correct, to the best of my knowledge, information, and belief. Further, I certify that I am qualified and authorized to file this Verification.

Executed on May 30, 2013.



Chris Sanford

APPENDIX A

[REDACTED FROM PUBLIC VERSION]