

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board****49 CFR Chapter X**

[Docket No. EP-711]

Petition for Rulemaking To Adopt Revised Competitive Switching Rules**AGENCY:** Surface Transportation Board, DOT.**ACTION:** Notice of commencement of proceeding and request for comments.

SUMMARY: The Surface Transportation Board (the Board) is commencing a proceeding to consider a proposal submitted by The National Industrial Transportation League (NITL) to increase rail-to-rail competition. The Board is seeking empirical evidence about the impact of the proposal, if it were to be adopted. Specifically, the Board is seeking public input on the proposal's impact on rail shippers' rates and service, including shippers that would not benefit under NITL's proposal; the proposal's impact on the rail industry, including its financial condition and network efficiencies; along with methodologies for the access price that would be used in conjunction with competitive switching.

DATES: Comments are due by November 23, 2012; responses are due February 21, 2013.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the "E-Filing" link on the Board's Web site, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional

paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 711, 395 E Street SW., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT:

Lucille Marvin at the Board's Office of Public Assistance, Governmental Affairs, and Compliance, (202) 245-0238. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION: In 2011, the Board held a hearing to consider the state of competition in the railroad industry and what steps, if any, it should take to increase rail-to-rail competition. See *Competition in the Railroad Industry*, Docket No. EP 705. After the hearing, NITL proposed that the Board modify its standards for mandatory competitive switching. NITL suggests that the Board mandate switching where a "captive shipper"—one that lacks competitive transportation options—is located within a terminal area and also within 30 miles of a working interchange, and the transportation rate charged by the Class I carrier from origin to destination exceeds 240% of that carrier's variable costs of providing service. This proposal has the potential to promote more rail-to-rail competition and reduce the agency's role in regulating the reasonableness of transportation rates. It could permit the agency to rely on competitive market forces to discipline railroad pricing from origin to destination, and regulate only the access price for the first (or last) 30 miles.

As described more fully in our decision, however, additional information is needed before we can determine how to proceed. The Board

therefore is instituting a proceeding to receive empirical evidence on the impact of the proposal on shippers and the railroad industry. Specifically, interested parties are invited to submit information on the following: (1) The impact on rates and service for shippers that would qualify under the competitive switching proposal; (2) the impact on rates and service for captive shippers that would not qualify under this proposal (because they are not located in a terminal area or within 30 miles of a working interchange); (3) the impact on the railroad industry, including its financial condition, network efficiencies or inefficiencies (including the potential for increased traffic); and (4) an access pricing proposal. The empirical evidence we are now requesting would be used to augment the Board's ongoing analysis of NITL's proposal as well as to evaluate other issues raised in the *Competition in the Railroad Industry* proceeding.

Additional information is contained in the Board's decision, which is available on our Web site at www.stb.dot.gov. Copies of the decision may also be purchased by contacting the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: July 25, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

Jeffrey Herzig,

Clearance Clerk.

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