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BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
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November 16, 2023
Part of
Public Record

Docket No. EP 711 (Sub-No. 2)


RECIPROCAL SWITCHING FOR INADEQUATE SERVICE

MOTION TO MODIFY PROCEDURAL SCHEDULE

submitted by

THE COALITION ASSOCIATIONS

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 GRANTED Office of Proceedings	DECISION ID NO.: <u>51959</u>
	DECIDED DATE: <u>11/20/2023</u>
	SERVED DATE: <u>11/20/2023</u>
	APPROVED: <u><i>M. A. ...</i></u> Director
	<input type="checkbox"/>

On Behalf of:
American Chemistry Council
The Fertilizer Institute
The National Industrial Transportation League

November 16, 2023

EXPEDITED CONSIDERATION REQUESTED

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The Coalition Associations¹ hereby submit this motion to modify the procedural schedule set by the Surface Transportation Board (“STB” or “Board”) on September 29, 2023 in the Notice of Proposed Rulemaking (“NPRM”), in Docket No. EP 711 (Sub-No. 2), *Reciprocal Switching for Inadequate Service*. The Coalition Associations respectfully request an additional 14 days to submit reply comments in Docket No. EP 711 (Sub-No. 2). Under this modified schedule, reply comments would be due on December 20, 2023. Given the proximity of the December 6, 2023, deadline to submit reply comments, the Coalition Associations respectfully request the Board’s expedited consideration of this motion.

Counsel for the Coalition Associations has conferred with counsel for the Association of American Railroads (“AAR”), BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company, Canadian National Railway Company, Canadian Pacific Kansas

¹The “Coalition Associations” are the American Chemistry Council (“ACC”), The Fertilizer Institute (“TFI”), and The National Industrial Transportation League (“NITL”).

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City Limited, and Union Pacific Railroad Company, who have all indicated they do not oppose this motion to modify the procedural schedule.

On September 25, 2023, AAR filed a motion to extend the comment period by 90 days.² The Board partially granted AAR's motion and extended the deadline to submit opening comments from October 23, 2023, to November 7, 2023, and extended the deadline to submit reply comments from November 21, 2023, to December 6, 2023.³ As explained below, good cause exists for granting this motion and for modifying the procedural schedule established on September 29, 2023.

First, The Board's schedule provides only 29 days for submitting reply comments. When the Board extended the deadline for opening comments, it shifted the deadline for reply comments from immediately preceding the Thanksgiving Holiday to shortly after that holiday. Preparing reply comments over the Thanksgiving holiday effectively shrinks the already tight 29 day reply window and complicates the Coalition Associations' ability to coordinate with its members to obtain information to support reply comments.

Second, the volume of comments submitted by the Railroads and other stakeholders is substantial. Stakeholders have submitted thousands of pages of documents in the opening round of comments that must be reviewed and considered by all interested parties, including the Board. A sufficient amount of time to respond to these opening comments is necessary to develop a record that will allow the Board to make a sound, informed decision.

² Request for Extension of Time, *Reciprocal Switching for Inadequate Service*, Docket No. EP 711 (Sub-No. 2) (STB served September 25, 2023).

³ Decision, *Reciprocal Switching for Inadequate Service*, Docket No. EP 711 (Sub-No. 2) (STB served September 29, 2023) (hereinafter "Decision").

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Third, the gravity of the issues to be considered justifies an extension of time. The Board itself stated that the NPRM stems from “‘critical and ongoing service problems’ in the freight rail industry.”⁴ The criticality of ongoing freight service problems is not lost on the Coalition Associations. Indeed, the member companies that constitute the Coalition Associations are faced with operational challenges, staffing shortages, and production shortages caused by inadequate service on a daily basis. Accordingly, the Coalition Associations require additional time to consider the opening comments and develop a comprehensive response.

Finally, two weeks would not unduly delay the Board’s consideration of comments in this proceeding. As the Board explained in its Decision, tripling the comment period would “‘substantially and unduly delay the Board’s consideration of comments in this important proceeding.”⁵ But the Board recognized that it “‘solicited comments on many issues and proposed a detailed set of regulations.”⁶ In extending the opening comment deadline, the Board concluded that an extension of 15 days would “‘reasonably accommodate potential commenters while also ensuring timely consideration of the issues.”⁷ The Coalition Associations, perhaps more than any other interested party, are cognizant of the need for a Final Rule on reciprocal switching. A two week extension of time strikes a balance between considering and responding to the voluminous opening comments without unduly delaying a Final Rule.

For the foregoing reasons, good cause exists for modifying the procedural schedule and extending the deadline to submit reply comments to December 20, 2023.

⁴ *Id.* at 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

EXPEDITED CONSIDERATION REQUESTED

Because good cause exists and because counsel for the railroads do not object to this motion to modify, the Coalition Associations respectfully requests the Board grant this motion and extend the deadline to submit reply comments in Docket No. 711 (Sub-No. 2), *Reciprocal Switching for Inadequate Performance* by 14 days up to and including December 20, 2023.

Respectfully Submitted,

/s/ Jeffrey Moreno

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