BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. EP 788

ELIMINATING REGULATORY BARRIERS TO COMPETITION: REVIEW OF PART 1144

COMMENTS FROM THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

SARAH G. YURASKO
SVP–Law and General Counsel
American Short Line and
Regional Railroad Association
50 F Street NW Suite 500
Washington, DC 20001
(202) 628-4500

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I. Introduction

The American Short Line and Regional Railroad Association (ASLRRA) submits these comments in response to the Surface Transportation Board (STB)'s proposal to repeal its regulations on "Intramodal Rail Competition," which implement the agency's statutory authority to prescribe reciprocal switching agreements, through routes, and through rates.[1] The notice explained that the approach set out in the regulations, which narrows the Board's statutory discretion, may no longer be appropriate on an industry-wide basis, and its repeal would allow the Board to consider the prescription of through route, through rates, and reciprocal switching agreements on a case-by-case basis under the applicable statutory standards.

II. Interest of the ASLRRA in this Proceeding

The ASLRRA is a national trade association representing the interests of about 600 short-line and regional railroad members in legislative and regulatory matters. Short lines operate approximately 50,000 miles of track in the United States, or about 30% of the national freight network, touching in origin or destination one out of every five cars moving on the national railroad system, serving customers who otherwise would be cut off from the national railroad

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[1] 91 Fed. Reg. 945 (Jan. 9, 2026).

network. Both in legislative matters before Congress and in regulatory and legal proceedings before the Board, other federal agencies, and the courts, ASLRRA advocates for enlightened public policies which promote a strong regional and short line rail component for the national transportation infrastructure.

III. Brief History of Part 1144

Under its general statutory authority at 49 U.S.C. § 10705(a)(1), the Board may, "when it considers it desirable in the public interest, prescribe through routes, joint classifications, joint rates, the division of joint rates, and the conditions under which those routes must be operated." Further, paragraph (a)(2) states that the Board may "require a rail carrier to include in a through route substantially less than the entire length of its railroad and any intermediate railroad operated with it under common management or control if that intermediate railroad lies between the terminals of the through route if required by, inter alia, 49 U.S.C. § 11102(c), which authorizes the Board to order "reciprocal" switching arrangements where such an arrangement is practicable and in the public interest, or where such agreements are necessary to facilitate competition.

In 1985, the National Industrial Transportation League (NITL) and the Association of American Railroads (AAR) petitioned the Interstate Commerce Commission (ICC), the Board's predecessor, to promulgate regulations that would provide standards for the cancellation of through routes and joint rates, and the prescription of through routes, through rates, and reciprocal switching. (*Original 1144 NPRM*), EP 445 (Sub-No. 1), slip op. at 1 (ICC served Mar. 27, 1985). After notice and comment, the ICC established Part 1144, which "narrow[ed] the agency's discretion under section 1110[2]" to grant relief to only those circumstances where there is a "reasonable fear of anticompetitive behavior." *Midtec Paper Corp. v. Chi. & N.W.*

Transp. Co., 3 I.C.C.2d 171, 181 (1986), *aff'd sub nom. Midtec Paper Corp. v. United States,* 857 F.2d 1487 (D.C. Cir. 1988).

However, the STB states that, in the 40 years since its adoption, Part 1144 has been rarely invoked, and the agency has never issued a prescription under its framework.[2] The Board explains that NITL and other railroad shippers have argued that Part 1144's requirement of anticompetitive conduct, as interpreted by the Board, has "set an unrealistically high bar for shippers to obtain'' competitive access. E.g., Pet. for Rulemaking to Adopt Revised Switching Rules (*2016 Switching NPRM*), EP 711 at 27, 2016) (summarizing comments from the National Grain and Feed Association, the Agricultural Retailers Association, the National Chicken Council, the National Association of Wheat Growers, the National Council of Farmer Cooperatives, the National Corn Growers Association, E.I. du Pont de Nemours & Co., Consumers United for Rail Equity, and the U.S. Department of Agriculture); NITL Pet. for Rulemaking 16 (July 7, 2011), EP 711.

The Board states that neither the rule's original shipper proponent, NITL, nor any other shipper group, finds Part 1144 acceptable today, at least as applied to reciprocal switching.[3] Further, much of the original rule at Part 1144 concerned through route and joint rate suspensions and investigations, which have been abrogated by ICCTA's termination of tariff requirements and resulting elimination of the Board's authority to set aside proposed joint rate cancellations.[4] Finally, the Board explains that removing Part 1144 is sound policy because it eliminates what appears to have created, in practice, an unnecessarily high barrier to statutory

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2 *Id.* at 947.

3 *Id.* at 949.

4 EP 445, slip op. at 5 n.7.

relief, as always requiring a petitioner to demonstrate the "classical categories of competitive" abuse, or some other type of abusive, anticompetitive conduct under the standards of the Rail Transportation Policy, requirements that nowhere exist in section 10705 or section 11102(c), presents a regulatory impediment to cases that might otherwise be meritorious under those statutory provisions.[5]

Upon repeal of Part 1144, the Board explains that it would consider the prescription of through routes, through rates, and reciprocal switching agreements on a case-by-case basis under the applicable statutory standards at 49 U.S.C. 10705(b) and 11102(c), which may be further refined through agency adjudication under the standards set forth in the Administrative Procedure Act, 5 U.S.C. 706.[6]

IV. ASLRRA Concerns for Short Line Railroads

ASLRRA submits that the proposal to remove Part 1144 may have the effect of increasing competition. Short line railroads subscribe to the belief that competition is good for the overall freight railroad industry. ASLRRA's member railroads provide excellent first-mile, last-mile service to shippers unless there is some obstacle to providing that service. The STB's proposal to handle situations where there is such an obstacle on a case-by-case basis is sound, as that would allow the Board to consider whether mandating a reciprocal switch is warranted due to proven inadequate service, for example.

While ASLRRA does not oppose the removal of Part 1144, it does have concerns for potential inadvertent negative impacts to short line railroads. Short line railroads already face extensive competition and have unique and fragile economics that could be put at risk if they

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5 NPRM at 949.

6 Id. at 950.

were subject to a prescription of through routes, through rates, or a reciprocal switching agreement. Further, short lines have much less market power than our Class I counterparts. While a short line railroad would most likely not be the impetus for an adjudication before the Board under 49 U.S.C. §§ 10705(b) and 11102(c), it could be impacted if it plays a role in the rail transportation at issue. Any adjudication resulting in the prescription of a through route, through rate, or reciprocal switch, could inadvertently remove traffic from a short line.

While a Class I carrier could potentially absorb a relatively small reduction in overall revenues due to a route, rate, or switching adjudication, it would be a far different matter for short lines. Unlike larger railroads, the costs of short lines cannot be spread over a vast rail system or large customer base. All the freight revenues generated by customers on a short line are vitally necessary to sustain the financial viability of that line. In many cases, three customers account for two-thirds of the rail traffic shipped on a short line. Loss of all or a portion of the revenues from a single shipper could have a significantly adverse effect on the financial viability of a short line given the high infrastructure and fixed costs that must be supported by those revenues. Moreover, it should not be assumed that short lines will inevitably 'win some and lose some' and ultimately come out even. Because, in many cases, short lines exist to serve customers at remote locales over low-density railroad lines, extending switching access to short line customers would threaten the very existence of many short lines and the essential transportations services they provide to numerous communities across the country. This would be particularly harmful to the many smaller shippers who are most vulnerable to a reduction in the revenue necessary to maintain the line.

The Board should provide guidance on how it will address the detrimental financial impact that an adjudication under §§ 10705(b) and 11102(c) could have on a short line railroad,

particularly if the short line railroad is inadvertently swept into the proceeding. Given the high value customer service that short lines provide to their customers, any adjudicatory decision that would threaten their viability, could not be seen to be "desirable and in the public interest."

Hypothetical Example of Inadvertent Harm

As an example of how a short line could be inadvertently impacted, suppose a short line railroad serves manufacturing customers in a rural region. One of the short line's largest customers ships plastic pellets to the Gulf Coast and typically moves those shipments under a joint-line rate with Class IA, the incumbent carrier in the region, and this plastics shipper represents one of the short line's top customers, accounting for roughly 18% of the railroad's annual revenue. Further, suppose the total door-to-door rate is $5,000 per car, and the short line's portion is $500, or 10% of the total rate. In this example, due to circumstances outside of the short line's control, a reciprocal switching order is initiated, allowing the plastics shipper to access Class IB as an alternative carrier beyond the interchange point with Class IA. To keep the traffic and avoid a reciprocal switch, Class IA offers a lower through rate of $4,000 per car.

Although the short line's service, costs, and mileage have not changed, the shipper now expects each party on the new route to share proportionally in the $1,000 reduction. This makes the short line's portion drop from $500 to $400, resulting in a 20% loss of revenue on every car. For the short line, that 20% cut is not absorbed by a large network – it immediately affects the railroad's ability to operate and maintain its infrastructure. Because the plastics shipper is one of the short line's three major customers, the impact is significant. If the plastics traffic alone accounts for 18% of annual revenue, a 20% cut drops overall revenue by nearly 4% systemwide. Since short lines operate on thin margins and rely heavily on a small number of core customers, a

revenue drop of this magnitude could jeopardize track maintenance programs, equipment overhauls, or even the ability to retain employees.

In this hypothetical, a seemingly modest $100 reduction in a rate division, driven by a reciprocal switch order outside of the short line's control, becomes a potential existential threat to the short line's economic survival.

Relatedly, in situations where a reciprocal switch is ordered and a short line has operating or trackage rights to reach an alternative interchange, the economics can quickly become unfavorable. Increased per-car costs associated with additional switching, trackage fees, crew time, and dispatching complexity can coincide with a reduction in revenue divisions, accelerating financial losses for the short line. This dynamic underscores the risk that this well-intentioned regulatory change could unintentionally disadvantage small business railroads; thus, we urge the STB to consider these issues before ruling on any individual case.

IV. Conclusion

ASLRRA appreciates the opportunity to share the short line railroad perspective on intramodal rail competition and urges the STB to provide guidance on how it would approach, on a case-by-case basis, any adjudication under 49 USC §§ 10705(b) and 11102(c) that involves a short line railroad, through discussion in the preamble to the final rule.

Respectfully submitted,

Sarah G. Yurasko
General Counsel
American Short Line and Regional Railroad Association
50 F Street NW, Suite 500
Washington, DC 20001

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