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Q&A: Chemical shippers seek more rail options

The American Chemistry Council (ACC) has been one of the leading voices in calling for enhanced regulatory remedies to increase competition between rail carriers, including through reciprocal switching. Jeff Sloan is ACC's senior policy director and also works closely with the Rail Customer Coalition, of which ACC is a member. In this interview, edited for length and clarity, he discusses issues before the Surface Transportation Board that are important to ACC and other shipper groups.

What is the outlook for what can and should be done about the regulatory pause that is in place at the STB for major policy decisions like reciprocal switching?

We are hopeful that the pause does not last too long and that early next year that we will have nominees that will get through the confirmation process relatively quickly because it is important that we have a fully staffed board. There are too many issues important to too many different stakeholders to not have a fully-staffed board.

Of the major issues before the agency, are there one or two that are higher priority for ACC and its members than the others?

Rate reasonableness standards and reciprocal switching are the two priorities for us.

We want greater competition in the freight rail industry and competitive switching is the best opportunity to do something on that front. And where there is not competition, you have to have a functioning rate review process, and the stand-alone cost methodology is widely recognized, even by board members, as not being workable for carload shippers.

In recent cases involving chemical companies, it was not that the rates were proven to be reasonable, just that the rates could not be determined to be unreasonable and therefore the shippers lost after spending three and a half years and $5mn per case on the shipper side in all three of those cases and the shipper lost in every case. And some of the rates that were found not to be unreasonable were 900pc of the cost of providing the service by carriers. Between the time it takes, the money it costs and the results you get, it has proven itself to not be a workable process.

Does ACC have a preferred solution to make rate cases more efficient for shippers?

There needs to be an alternative process to determine whether rates are unreasonable and our preferred solution is based around rate benchmarking that is pretty well developed by the Transportation Research Board.

Instead of comparing the rate to the cost of a rate on a completely new railroad, you compare it to what you would expect a competitive rate to be in a competitive market. There are plenty of studies and data out there on rates that can be used. You can do economic modeling about what drives that rate, and you can compare the captive rate to what the model says you should expect to pay in a competitive environment.

And the amount of additional money you are paying between the two rates that should be the basis of whether the rate is reasonable. Rate benchmarking is a pretty well established economic tool. Government agencies use it and that is the most promising path forward, and we think that could be a much more reliable and predictable process because you would know what you are comparing it to at the front end.

How would this approach be different from the board's existing three-benchmark, and other simplified methodologies?

In this model you would be solving for what a competitive rate would be in the marketplace and comparing the rate to those.

Under the existing rules, you are comparing those to other captive rates for traffic so it is only the really extreme outliers who have any chance of obtaining rate relief. This could be more applicable more broadly to all captive shippers. You would still have to prove market dominance and it would not be an across the board rate reduction but would provide a basis for comparison. The board would have to decide a reasonable margin above a competitive rate for a railroad to be revenue adequate and everything else that goes into it. But it is the differential in rates that STB should be focused on.

Several carriers have been deemed revenue adequate in recent years. Is development of a revenue adequacy constraint on railroads pricing something ACC would like to see?

Yes, absolutely. We have submitted substantial comments in the revenue adequacy proceeding. We think the concept of rate benchmarking kind of gets at that.

It is not the revenue adequacy constraint as much as a different way of looking at whether a rate is reasonable or not. In the coal rate guidelines, that created the stand-alone cost that recognized differential pricing up to the point that carriers are revenue adequate. You cannot continue to charge more and more to your captive shippers. This is not advocating for an across the board rate limit. If the railroad can earn more than adequate revenues by charging competitive prices, there are no constraints in competitive markets. Once they are revenue adequate, there is not a reason to continue to charge higher differentials to their captive customers.

What would be the biggest benefit of reciprocal switching to an average carload customer?

Having the ability to get multiple bids for traffic. We think the service issues that we have seen on CSX recently provides further evidence that additional competition is a good thing. It is unimaginable that CSX could treat its customers the way they have if it was truly a competitive marketplace. It would be impossible for them to stay in business.

Competitive switching is not a cure-all, but it provides some competition to shippers that currently do not have any options at all.

Has ACC done things to try and speed up STB's consideration of the reciprocal switching issue since it has been at the board since 2011?

We have been frustrated at the slow pace. We have been very clear that we want to see final action on this. When the board is fully manned, they do not need to start over on this. There is a tremendous amount of information already in the record on this. There is the board's proposal which we support. There could be some modifications made to that if they felt it was necessary, but this should not be starting from scratch.

The National Industrial Transportation League (NITL) provided extensive amounts of data to them. There was an extended public comment period. They have the data they need. They just need to decide what they are willing to do. They need to recognize that the status quo here is not working. No shipper has been able to get access to switching and we believe that is a failure. The Staggers Act specifically gives STB the authority to use competitive switching as a tool to promote competition. For all practical purposes, it is impossible to meet the current standard.

How would ACC respond to railroad objections that switching will degrade service or undermine their ability to invest in their networks?

Competitive switching would not harm efficiency at all and may provide additional efficiency as there may be shorter routes that are available through switching that are not available today.

In many cases, there is already a switch off from the long-haul train to the local, so you are not adding an additional switch. You are simply switching from the local to a different carrier's long-haul train so there is no additional step there. For cases where it would be much more complicated, that is exactly why STB proposed a case-by-case approach, because if it would degrade service or become unduly complex, the board can deny switching.

Is there any concern that because the board has proposed that case-by-case approach, these cases could get bogged down at the board?

It needs to be a timely and less burdensome process. We recognize that a case-by-case approach could get bogged down, but we are hopeful the board will create rules that minimize the time and the burden associated with getting switching.

Would categorical presumptions like those in the original shipper proposal be a way to do that?

Yes, and we support NITL's original proposal that had a set of presumptions that were rebutable by the railroad would be an efficient way to handle these cases.

Have you heard of any timeline to fill the empty slots at the STB? And does ACC have any preferred candidates among the names being floated in the industry?

We have heard the same names that everyone else has. The Rail Customer Coalition, of which ACC is a member, has publicly supported Patrick Fuchs from the Senate Commerce Committee, but have not publicly endorsed any other candidates.

We want to see candidates committed to moving the board forward on some of these key reforms. We want to see candidates that are committed to changing the status quo and making the board a more effective and efficient agency. We remain committed to supporting chairwoman Ann Begeman and vice chair Deb Miller. We would certainly be supportive of Miller being re-nominated for another term if she were willing. (Miller is in her holdover year after her term expired at the end of 2017.)

Have ACC members been affected by the recent CSX service issues and what have they been doing to cope with that?

Yes, the CSX service issues have definitely affected ACC members. Members have seen some improvement since the bad situation that shippers experienced over the summer, but service levels are still not up to where they were before. There continue to be serious local disruptions and those have led to many situations where a facility has either shutdown or come very close. Either a production facility or a customer facility.

Companies have had to go to extraordinary lengths to keep customers supplied at much higher costs than they were expecting, if CSX service had been acceptable.

The Rail Customer Coalition had asked for a follow-up meeting with the board members about the service issues. Did that ever occur and what, if anything came from it?

The coalition did have meetings with the board members before the agency sent its letter to CSX last month, and we view the letter as a positive first step.

We would like to see the board look at the metrics they are getting from CSX to make sure they are the most useful numbers and also streamlining their emergency relief procedures so that it is quicker and easier for shippers to seek relief the next time there is a major service issue. There would be an easy process in place for a broad swath of shippers to seek relief in the event of another large service issue.