Transportation Update

July 2025

Seventh Circuit Vacates STB's Reciprocal Switching Regulations

On July 8 the U.S. Court of Appeals for the Seventh Circuit overturned the reciprocal switching rules that the Surface Transportation Board (STB or Board) adopted in *Reciprocal Switching for Inadequate Service*, 89 Fed. Reg. 38646 (May 7, 2024) (codified at 49 C.F.R. part 1145) (Final Rule). The court found that the STB exceeded its statutory authority by failing to require a finding of inadequate service before mandating a reciprocal switching agreement. This decision has significant implications for freight rail carriers and their customers.

Background

Reciprocal switching allows a shipper or receiver that is "captive" to a single serving railroad ("incumbent railroad") to request access to a competing carrier via a "switch," where the incumbent carrier handles the customer's freight between its facility at the origin or destination and the tracks of the competing carrier. This arrangement promotes competition and improved service for captive rail customers. Under 49 U.S.C. § 11102(c), the STB may require reciprocal switching when "practicable and in the public interest" or "necessary to provide competitive rail service."

Absent reciprocal switching, the so-called "Long-Haul" statute allows the incumbent railroad to transport a captive customer's traffic as far as the railroad can transport it on its network. The railroad can charge the shipper for this entire movement, limited only by its statutory obligation to assess a reasonable rate. The railroad also can refuse to hand the shipper's traffic off to a competing carrier that offers better service.

The Final Rule established a new process under only the "practicable and in the public interest" standard, pursuant to which the STB would require reciprocal switching if the incumbent carrier failed to meet certain performance standards related to service reliability and consistency. The rule did not require the Board to make a specific finding that the incumbent carrier's service was inadequate.

Legal Challenge and Court's Reasoning

The court's decision turned on whether the statutory practicable and in the public interest standard requires inadequate service. The railroads that challenged the Final Rule argued that this standard does not allow the STB to order reciprocal switching unless it finds "there was some actual necessity or compelling reason for the [reciprocal switching] agreement," such as inadequate service. In defending the Final Rule, the STB argued that it could prescribe a reciprocal switch after "a balancing of the respective interests of the affected carriers, shippers, and public at large."

Siding with the railroads, the court held that the reciprocal switching statute at 49 U.S.C. § 11102(c) requires "a finding of inadequate service" as "a prerequisite" to the STB prescribing a reciprocal switching agreement pursuant to the practicable and in the public interest standard. The court acknowledged that the STB's position was supported by precedent, but concluded that the "totality of the history" of the precedent interpreting the practicable and in the public interest standard requires a threshold finding of inadequate service.

Also fatal to upholding the Final Rule was the Board's express statement in the rule that "the performance standards do not define what constitutes adequate rail service." Reinforcing this shortcoming was the Final Rule's failure to include any affirmative defense that would allow a railroad to prevent a reciprocal switching prescription by demonstrating the adequacy of its existing service. Thus, because the Final Rule "does not require a showing of inadequate service by an incumbent carrier before it authorizes reciprocal switching," the court concluded that the STB exceeded its authority in the Final Rule.

Due to this determination, the court declined to address the railroads' argument that the Board's performance standards should also be struck down because they are "arbitrary, capricious, and unsupported by the record." But the court noted that the Board could "reevaluate these standards in light of our decision and the arguments made on appeal, should it decide to re-promulgate the Rule on remand."

Finally, the railroads challenged as unlawful the Final Rule's requirements regarding the collection and reporting of certain performance data. They contended that those obligations exceeded the Board's ancillary powers conferred in its enabling statute, 49 U.S.C. § 1321. However, rather than decide this issue, the court remanded the issue back to the Board for further proceedings.

Next Steps

The STB must determine whether to remove the Final Rule or modify it to address the infirmities the court identified. Stakeholders should monitor how the Board responds to the court's decision in case it chooses to pursue modifications to the Final Rule.

For the court's decision, see *Grand Trunk Corporation et al. v. Surface Transp. Board*, No. 24-1811.

FOR MORE INFORMATION

Thompson Hine was actively involved in initiating and defending the Board's proceedings on reciprocal switching reforms. For more information on reciprocal switching and rail rate reform in general, please contact:

Karyn A. Booth
202.263.4108
Karyn.Booth@ThompsonHine.com

Sandra L. Brown
202.263.4101
Sandra.Brown@ThompsonHine.com

Jason D. Tutrone
202.263.4143
Jason.Tutrone@ThompsonHine.com

Jeff Moreno
202.263.4107
Jeff.Moreno@ThompsonHine.com

David E. Benz
202.263.4116
David.Benz@ThompsonHine.com

Richard M. Couch
202.973.2736
Richard.Couch@ThompsonHine.com