

**SURFACE TRANSPORTATION BOARD DEFERS ACTION ON REQUEST THAT IT INSTITUTE RULEMAKING TO ELIMINATE "PAPER BARRIERS"**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has deferred action on a petition filed by the Western Coal Traffic League (WCTL) seeking a rulemaking proceeding to eliminate "paper barriers."

Paper barriers are contractual provisions limiting the opportunities for a small railroad to interchange traffic. Historically, they have been imposed in connection with the purchase by a small carrier of a short segment of track from a larger carrier. In exchange for a lower purchase price and/or more favorable financing terms, the smaller carrier would typically agree to incur penalties if it did not interchange all, or substantial portions of, its traffic with the selling larger carrier. Recently, some parties have complained that paper barriers interfere with the ability of smaller carriers to expand the competitive options available to shippers.

Last spring, the Board asked representatives of the railroad industry and the shipping community to meet privately to attempt to address many of the issues that had been raised concerning rail access and competition. Consistent with the Board's request, the American Short Line and Regional Railroad Association (ASLRRA) and the Association of American Railroads (AAR) entered into a formal Rail Industry Agreement (RIA) intended to provide a framework for improving the ability of smaller (Class II or III) railroads and Class I railroads to work together to fulfill their shared goal of serving the shipping public in the most efficient possible manner. The RIA addressed a variety of subjects, including rate-related provisions consisting of a series of bilateral commitments with respect to switch charges and interline rates; and non-rate provisions aimed at better meeting the car supply needs of customers served by short line and regional railroads, improving the quality of interline service provided jointly by smaller railroads and Class I carriers, and giving Class III carriers access to new routes and haulage arrangements in certain circumstances in order to develop new business. The non-rate provisions of the agreement do not entirely eliminate paper barriers, but they clearly do reduce the impact of paper barriers in certain respects.

WCTL asked the Board to initiate a rulemaking to adopt specific policies that will be applied when line sale-related paper barriers are brought before the Board for review. Its proposed rules would limit the uses to which paper barriers could be put. AAR and ASLRRA responded in opposition to WCTL's petition, arguing that the RIA already provides a comprehensive set of general principles that will limit new paper barriers to those that are legitimate by disallowing inappropriate restrictions on the short line's ability to develop new traffic; by disallowing excessive per car charges and other penalties; and by providing for arbitration in the event of disputes.

The Board decided not to act on the petition at this time, but rather to hold it in abeyance. The Board noted that WCTL's proposal could affect the process through which many light-density lines used to originate or terminate traffic for many rail-dependent shippers have been spun off by the larger railroads to short line and regional carriers, and that the RIA is intended to advance the way in which this process can maintain and even improve upon the service provided to many shippers located along those light-density lines. The Board also expressed reservations about acting in a way that would quickly overturn a privately negotiated settlement, completed at the Board's direction, noting that such precipitous action would unduly chill the process of privately negotiated settlements that the Board has stated it prefers. It found that a more responsible approach would be to develop a better record with the benefit of experience under the RIA before acting on WCTL's petition. The Board stated:

It may be that no regulations will ultimately be necessary; it may be that the private parties will work out some but not all of the issues that concern WCTL; or it may be that the issues that will arise will be different from

those that WCTL now envisions. In any case, it appears to us that the petition is premature, and that the appropriate course of action is to hold the petition for rulemaking in abeyance, and to revisit the matter later based on the experience under the RIA.

The Board's decision was issued today in *Review of Rail Access and Competition Issues*, STB Ex Parte No. 575. The decision is available on the Board's web site at [www.stb.dot.gov](http://www.stb.dot.gov).

###