

Surface Transportation Board Requests Comment on Proposed Procedures to Expedite Resolution of Large Rail Rate Challenges

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board is instituting a proceeding to amend its regulations to further expedite the resolution of large railroad rate challenges that come before it. The proposed new regulations would expedite discovery (a procedure by which parties seek information from each other) and would require parties to engage in mediation before the filing of a rate complaint.

Large rail rate cases are those that are reviewed under what is known as the "stand-alone cost" (SAC) methodology. Smaller rate cases are those for which a full SAC analysis would be too burdensome, given the amounts of money in dispute. In recent years, the Board has focused much of its energy on streamlining and simplifying the rate-complaint process. For smaller cases, the Board recently compiled a public record in another proceeding on the appropriateness of legislation providing for mandatory, binding arbitration; for larger cases, in recent years the Board has taken various steps to expedite the decisional process, including simplifying the market dominance procedures, standardizing the SAC evidentiary procedures, and imposing various processing deadlines.

Nevertheless, delays in resolving large rate cases continue to be a concern. Because many of the delays in moving such cases forward revolve around discovery disputes, which are ultimately brought to the Board for resolution, in a decision issued today the Board proposed two changes in the manner in which discovery is handled. First, the Board indicated its intent to make the standards for obtaining discovery more restrictive in large rate cases, so that parties would know in advance that they should not attempt to obtain certain types of information. Second, the Board proposed to allow informal conferences among agency staff and the parties to narrow issues in dispute and to provide for prompt rulings on remaining discovery impasses.

The Board noted that a more efficient means of moving a rate dispute toward quick resolution at an early stage is to bring parties together outside of the adjudicatory context. Therefore, the Board proposed to require that a shipper seeking relief from a railroad in a large rate case engage in non-binding mediation of its dispute (binding alternative dispute resolution is not permitted under the agency's governing statute) prior to filing a formal complaint with the Board. Under the Board's proposal, a mediator would be assigned by the agency to work with parties to try to reach a settlement within a specified time frame. The Board would not impose any filing fees for mediation requests, and the mediator's services would be paid for by the Board. If parties still were to fail to reach any resolution, the shipper could proceed to file a formal complaint with the Board.

The Board issued its decision today in the proceeding entitled *Proposed Procedures to Expedite Resolution of Rail Rate Challenges to be Considered Under the Stand-Alone Cost Methodology*, STB Ex Parte No. 638. A printed copy of the decision is available for a fee by contacting **D~ 2 D~ Legal Copy Service, Suite 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776**, or via da2dalegal@earthlink.net. The decision also is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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