

SURFACE TRANSPORTATION BOARD PROPOSES RULES TO PROVIDE EXPEDITED RELIEF FOR SERVICE INADEQUACIES

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SURFACE TRANSPORTATION BOARD PROPOSES RULES TO PROVIDE EXPEDITED RELIEF FOR SERVICE INADEQUACIES

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has proposed new rules that would establish expedited procedures for shippers receiving poor service from its "host" or "incumbent" carrier greater opportunity to obtain service from an additional rail carrier.

Under the law, railroads are required to provide reasonable service at reasonable rates. The Board has authority to address significant service failures under the "emergency service" provisions of the statute, 49 U.S.C. 11123, and it used that authority to provide additional service in the Houston area, and to route carriers around Houston, in response to the service emergency in the West. Additionally, a shipper seeking to force a carrier to allow other carriers access to its system may seek relief under the "competitive access" rules of 49 CFR Part 1144. Before competitive access is granted, however, the existing rules generally require a showing that the "incumbent" carrier, that is, the carrier whose lines reach the shipper's facility, has acted in an anticompetitive way, and there are no other rules currently in place that provide a formalized way in which shippers can obtain service from other carriers when the incumbent carrier's services are inadequate.

In its decision in Review of Rail Access and Competition Issues, STB Ex Parte No. 575 (STB served Apr. 17, 1998), which was issued after the Board conducted two days of informational hearings to examine issues of rail access and competition in today's railroad industry, the Board addressed a variety of complaints of rail shippers, including complaints that available remedies are burdensome, costly, and unresponsive. It initiated actions on several fronts: as to certain issues, it directed the various interested parties to meet and seek private resolution now, while, as to others, it indicated its intent to pursue relief administratively now. See "Surface Transportation Board News" release No. 98-25, issued on April 17, 1998.

One such issue that the Board indicated it would pursue administratively involved adopting access procedures to address service inadequacies. In its decision issued today, the Board followed through on its expressed intent by formally initiating a rulemaking proceeding. Under the proposed rules, shippers seeking to require a

host carrier to open up its lines to another carrier must show that, over an identified period of time, there has been a substantial, measurable deterioration in the rail service provided by the incumbent carrier.

The Board cautioned that these rules are not meant to redress minor service disruptions, noting that access — particularly that which would compel physical access by another railroad over an incumbent's lines — is a serious remedy with potentially significant operational, safety, and financial consequences for the involved carriers. Thus, it expressed its intent that the rules be used to remedy only substantial service problems that cannot readily be resolved by the incumbent railroad, and it proposed to require shippers to: (1) first discuss and assess with their incumbent carrier whether adequate service can be restored within a reasonable period of time that is consistent with the shippers' needs and, if not, outline in the request for relief why that is the case; and (2) obtain from another railroad the necessary commitment — should it be afforded access — to meet the shippers' service needs, and describe the carrier's plan to do so safely and without degrading service to its existing customers or unreasonably interfering with the incumbent's overall ability to provide service.

The proposed rules provide that, if relief is granted, once the incumbent carrier can demonstrate that it has restored, or is prepared to restore, adequate service, it may file a petition to terminate that relief. The Board discouraged an incumbent carrier from filing such a petition too hastily after the Board's order, however — noting that they should not generally be filed less than 90 days after relief is granted — as the objective in a proceeding of this nature is to provide shippers with a needed degree of certainty of adequate rail service.

Under the procedural schedule adopted in the decision, notices of intent to participate are due on May 28, 1998; comments on the proposal are due June 15, 1998; and replies are due July 15, 1998.

The Board's decision was issued today in Ex Parte No. 628, [Expedited Relief For Service Inadequacies](#). The decision is available on the Board's web site at www.stb.dot.gov.

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