

SURFACE TRANSPORTATION BOARD RESPONDS TO SHIPPER REQUESTS TO MODIFY PROCEDURES FOR DISCUSSING REVENUE ADEQUACY, COMPETITIVE ACCESS ISSUES WITH RAILROADS

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has responded to shipper requests to modify the procedures that the Board prescribed in its decision issued on April 17, 1998, in Review of Rail Access and Competition Issues, STB Ex Parte No. 575, for discussing revenue adequacy and competitive access issues.

The April 17 decision, 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, addressed a variety of shipper complaints about railroads and about access to the regulatory process. It responded to specific requests from shippers for action on specific issues by initiating activity on several fronts: as to certain issues, it indicated its intent to provide relief administratively, while, as to others, it directed the various interested parties to meet and seek private-sector resolution. See "Surface Transportation Board News" release No. 98-25, issued on April 17, 1998.

Two such issues that the Board directed the parties to pursue through private-sector discussions were revenue adequacy and competitive access. Consistent with the suggestions of shipper and railroad witnesses, the Board directed railroads to meet with shippers with a view toward selecting a panel of three disinterested experts to make recommendations as to an appropriate revenue adequacy standard, and to report back to the Board by May 15, 1998 on the composition of the panel. Consistent with its view that railroads and shippers could, if they tried, find common ground as to competitive access, the Board directed them to meet, negotiate, and report back to the Board by August 3, 1998.

On April 27, 1998, several shippers and shipper groups asked the Board to modify the April 17 order. They expressed the notion that the earlier reporting date for revenue adequacy reflected a perception on the Board's part that the issue was more urgent than the competitive access discussions, when in fact, "[c]ompetitive access is, by far, the most urgent matter to shippers"; they expressed the opinion that "it will be difficult to reach agreement with the railroads on [competitive access]"; and they "question[ed] the need for the elaborate and expensive processes set forth in the Board's order" regarding the expert panel for revenue adequacy. As to competitive access, the shippers asked the Board to require a progress report "by May 29, rather than August 3, on whether significant progress is possible." As to revenue adequacy, the shippers recommended suspending selection of a panel of experts, and instead permitting them to discuss other possible resolutions with the railroads and to report back to the Board by May 29, 1998.

In its decision, the Board pointed out that its April 17 order did not prioritize among the several issues it had raised. It stated that the due date for the report on revenue adequacy exercise was set earlier than the due date for the competitive access report merely because it would be simpler for interested parties to meet and select three unbiased experts than it would be to address and seek to resolve issues such as competitive access. It stated: "Although the shippers in their letter indicate that competitive access relief is more urgent than amendments to revenue adequacy, we did not establish a hierarchy of objectives, and we urge all parties to take all of the initiatives in our April 17 order seriously."

The Board also found that its order did not set forth "elaborate and expensive processes" regarding revenue adequacy. It pointed out that selection of the panel that railroad and shipper witnesses had earlier recommended should be a relatively straightforward exercise. The Board stated that "the process from then on would not be an elaborate one, and it would not be particularly expensive overall if all of the parties agreed in advance to support the recommendations of the expert panel rather than to continue to pursue the revenue adequacy issue before the Board, the courts, and whatever other forums the railroad and shipping communities typically address." Nevertheless, the Board agreed to give the shippers more time so that they could address with the railroads whether resolutions through means other than the expert panel is possible.

Because the next railroad/shipper meeting is not scheduled until May 21, 1998, the Board concluded that the reporting date of May 29, 1998 suggested by the shippers would not provide an adequate opportunity for meaningful progress. Therefore, although it permitted interim reports on May 29, 1998, the Board requested revenue adequacy reports by August 3, 1998. The Board asked the parties, if they cannot reach agreement, “not to reject, as the shippers apparently have done, the notion that the issue be resolved by a neutral expert or panel of experts.”

Finally, the Board expressed frustration with the shippers’ request to shorten the reporting time for the competitive access issue on the ground that it will be difficult to reach agreement with the railroads on this issue. It stated that its April 17 order recognized that negotiations concerning competitive access might require substantial work, and that is why it did not request a report until August 3, 1998. It found that shortening the reporting time to, in effect, permit one negotiating session with a report due a week later:

“would send a message that we see little prospect for accommodation on any aspect of the competitive access issue. If that were our view, however, we would not have directed the railroads to negotiate with the shippers in the first place. Notwithstanding the tenor of the shippers’ letter, we continue to believe that some common ground can be reached if all parties can put aside their preconceived notions and enter negotiations with an open mind, committed to seeking some common ground rather than immediately assuming that governmental fiat is the only answer or that more litigious avenues must be pursued. Therefore, we continue to urge the parties to negotiate seriously to reach agreement on as many issues related to competitive access as possible. We request a report on August 3, 1998, although, again, we will not preclude any party that wishes to do so from filing an interim report on May 29, 1998, or on any other date it deems appropriate.”

The Board’s decision was issued today in Ex Parte No. 575, Review of Rail Access and Competition Issues. The decision is available on the Board’s website at **www.stb.dot.gov**.

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