

Surface Transportation Board Issues Policy Statement on Its Use of 3rd-Party Contractors in Preparing Environmental Documentation

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a policy statement discussing the Board's practice of using third-party contractors to assist in the preparation of Environmental Assessments (EAs) or Environmental Impact Statements (EISs) to fulfill the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA), in Board proceedings. The policy statement explains the Board's environmental third-party contracting process, responds to concerns raised by some regarding existing procedures, and concludes that the current approach is the most appropriate one for the Board.

NEPA requires federal agencies "to the fullest extent possible" to consider the environmental consequences "in every recommendation or report on major federal actions significantly affecting the quality of the human environment." The purpose of NEPA is to focus the attention of the government and the public on the likely environmental consequences of a proposed agency action, before implementation, to minimize or avoid potential negative environmental impacts. Third-party contracting is a voluntary arrangement in which a railroad applicant pays for a contractor to work under the direction, control, and supervision of the Board's Section of Environmental Analysis (SEA) to assist in developing the environmental analyses that are necessary for compliance with NEPA.

In its policy statement, the Board stated that third-party contracting--which is specifically permitted by government-wide NEPA regulations promulgated by the Council on Environmental Quality--has been used and has generally worked well in more than 50 Board (and former Interstate Commerce Commission) proceedings. The Board also explained that there are adequate safeguards--including extensive opportunity for consultation with appropriate agencies and public input--to assure the objectivity of the third-party contracting process.

The Board's policy statement discusses the fact that certain applicants have raised concerns about the third-party contracting process and, in particular, their lack of control over unanticipated costs and delay associated with a particularly controversial railroad merger case and a rail line construction case. The Board explained that NEPA analysis at times involves the discovery of unforeseen environmental impacts, which must be evaluated to obtain a legally sufficient environmental review, but that, through SEA oversight and review in connection with the third-party contractor process, delay and unnecessary costs are minimized as much as possible. The Board also pointed out that environmental analyses are becoming increasingly complex, requiring the input of numerous experts in highly technical fields, and that it is impractical and prohibitively expensive for a small agency, like the Board, to employ the broad range of in-house technical experts that third-party contractors can have on staff. As a general matter, the Board noted that, for complex cases, it likely would never have the in-house resources needed to perform a legally sufficient environmental analysis in a timely manner. For these reasons, and based on review of the third-party contracting process at other agencies, the Board concluded that its existing third-party contracting process is "the most efficient and effective way for the Board to ensure a thorough, adequate, and legally sound environmental review under NEPA and related environmental laws."

The Board's policy statement was issued today in *Policy Statement on Use of Third-Party Contracting In Preparation of Environmental Documentation*, STB Ex Parte No. 585. A printed copy is available for a fee by contacting: **Da-To-Da Office Solutions, Room 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 466-5530**. The decision is also available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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